

APPENDIX A:

FOCUS GROUP SUMMARIES

The subcommittee's initial work consisted of an attempt to narrow the issues regarding sexual orientation and the California courts to those most important to gay men and lesbian lawyers, as well as to gay men and lesbian users and employees of the courts. The subcommittee held a series of focus groups across the state, inviting up to 20 attorneys at each location. The attorneys invited were gay men or lesbians or lawyers known to provide legal services to the gay or lesbian population in their communities.

The first focus group was held in San Jose. Similar focus groups followed in San Francisco, San Diego, Sacramento, and Los Angeles. Participants were simply asked to share their experiences, both positive and negative, in the California court system. Participants were also invited to share experiences they had either witnessed or heard about. Participants were assured that all names mentioned, including the names of the participants, would be kept confidential. The meetings were recorded by a certified court reporter.

The subcommittee identified the following issues from the input provided at these five focus groups:

- Influence of sexual orientation bias in judicial decision making;
- Lack of knowledge and understanding of sexual orientation issues and nuances;
- Need for preservation of privacy;
- Disrespect and mistreatment due to sexual orientation bias and homophobia;
- Bias in the substantive law and court procedures;
- Exclusion from informal legal system networks; and
- Lack of equal employment opportunities and benefits for attorneys and court personnel.

In addition to the issues raised regarding sexual orientation bias in the use of the courts or as a court employee, each focus group identified barriers to accessibility to the courts and the availability of the courts to address gay and lesbian issues and resolve disputes involving issues unique to gay and lesbian litigants. Some of these problems include various areas of substantive law that do not address gay and lesbian relationships, including estate planning, taxation, insurance, and family law. In addition, it was noted that the language of some Judicial Council forms does not reflect the relationship status of gay and lesbian litigants.

Lawyers reported that gay men and lesbians are increasingly choosing to opt out of the court system by paying private mediators who the litigants believe will be more educated about and fair in handling gay men and lesbian issues.

Virtually every participant in the focus groups agreed that a critical component for improving access to justice for gay men and lesbians in California is education: education of judges,

lawyers, court personnel, and jurors. Participants also agreed that educating judges would have a significant trickle-down effect on everyone coming before the court in any capacity.

Participants in the focus groups also discussed the small number of openly gay or lesbian judges in the state. Lawyers who aspire to the bench often choose to remain in the closet since an openly gay or lesbian lawyer has not been appointed to the bench in California for over 17 years. It was reported that certain gay and lesbian lawyer associations have ceased giving judicial endorsements because it has proved to be the “kiss of death” for those judicial candidates in some communities.

The feedback provided and the issues identified through the focus groups were used to inform the questions and structure of the survey instruments.

APPENDIX B:

FINDINGS, REFERENCES, AND RECOMMENDATIONS

Finding	Topic	References (Tables)	Recommendation
1	Overall Perception	10, 18	1, 2, 7, 8
2–3	Treatment	16, 29, 34	2
4	Treatment	9, 17	1, 2, 7, 8, 11, 12
5–6	Treatment	31, 33, 36, 38	2, 7, 11, 12
7	Treatment	32	2, 7, 11, 12
8–9	Disclosure of Sexual Orientation	18	2, 12, 17
10	Disclosure of Sexual Orientation	5, 6	2, 12, 17
11–12	Perceptions	20	1, 2, 5–8, 10–12, 13–15, 18
13	Perceptions	21, 51, 52	3, 5, 6, 10, 18–20
14–15	Perceptions	5, 10–14, 18, 19	1, 2, 5–12, 17, 18
16–17	Perceptions	10	1, 2, 5–12, 17, 18
18–23	Court Employees' Experiences	40–43, 45–47	2, 3, 4, 9, 11, 12, 16
24–26	Court Employees' Intervention	36–38	2, 3, 4, 9, 11, 12, 16
27–29	Court Employees' Observations	34, 48, 49	2, 3, 4, 9, 11, 12, 16
30–31	Court Employees' Observations	50, 52	2, 12, 19, 20

APPENDIX C:
CONSULTANTS' REPORT

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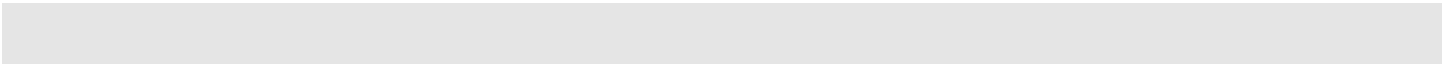
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Sexual Orientation Fairness in California Courts

Results from Two Surveys

Final Report, June 2000

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PREFACE

This report presents results from two surveys designed by the authors in conjunction with the Judicial Council of California's Advisory Committee on Access and Fairness Subcommittee on Sexual Orientation Fairness (SSOF). The surveys solicited the experiences and opinions of a sample of gay and lesbian users of the courts in California, and of a sample of all court employees. The findings presented here were designed to help the SSOF develop recommendations for improving sexual orientation fairness in California courts.

The authors are based in Los Angeles, California. Dr. Brewer holds a Ph.D in Labor Economics from Cornell University. Dr. Gray holds a Ph.D. in Social Ecology from the University of California, Irvine.

ACKNOWLEDGMENTS

This report was made possible through the help of many individuals and organizations.

The work has, at all points, been guided by the Subcommittee on Sexual Orientation Fairness of the Access and Fairness Advisory Committee of the Judicial Council of California, chaired by Judge Donna Hitchens and Judge Jerold A. Krieger. We greatly appreciate the input and encouragement of the subcommittee members.

We also thank the staff of the Administrative Office of the Courts (AOC), notably Arline Tyler and Clifford Alumno, for overseeing the administration and data entry of the surveys.

The sample of gay and lesbian court users was obtained from the membership lists of the Human Rights Campaign (HRC) and the National Gay and Lesbian Task Force (NGLTF). We thank Kate Kendell for arranging access to these lists, and the two organizations for sharing them with us.

Throughout the project, we have consulted many individuals with expertise in the area of treatment of lesbians and gay men in the courts and the law. They willingly provided invaluable input and advice: Eric Webber, Karen Lash, Pam Dunn, Curt Shepard, Sky Johnson, and Bill Rubenstein.

Finally, we thank Hector Espinosa and Chris McKelvey for research assistance, and Kathy Rosenblatt and Eve Fielder for formatting the surveys.

EXECUTIVE SUMMARY

This report presents findings from a study of the ways in which actual or perceived bias based upon sexual orientation affects the quality of justice in the California court system. The study was sponsored by the Sexual Orientation Fairness Subcommittee of the Judicial Council of California's Advisory Committee on Access and Fairness. The goal of the research was to determine the extent to which certain key groups have experienced or witnessed sexual orientation bias based on their interactions with the California court system.

To achieve this goal, two groups were studied: gay and lesbian users of the courts, and court employees. The research methods are briefly described here, followed by a summary of major findings.

Approach to the Study

Two surveys were conducted to assess the fairness of the California court system to lesbians and gay men: 1) a survey of court users; and 2) a survey of court employees. Although different methods were used for each population, the two surveys share a number of common features. Both focus on the California court system, with an effort to obtain data from every part of the state, and both emphasize the respondents' direct experiences and observations as opposed to general attitudes or beliefs. In this way, the surveys emphasize *what respondents directly experienced or observed* rather than what they believe happens to others. In addition, due to the sensitive nature of the research, respondents were granted anonymity so they could answer freely.

Survey of California Court Users

The first survey was designed for California court users, including jurors, witnesses, litigants, defendants, lawyers, and those using the courts to pay fines or file papers. The survey instrument was designed to determine whether gay men or lesbians 1) experienced or observed bias, discrimination, ridicule, or discomfort based on sexual orientation while using the courts; 2) had positive experiences based on sexual orientation while using the courts; and 3) believed they were shown equal treatment and respect in the courts. The survey asked respondents to report on both their most recent contact with the California courts and another contact with the California courts, provided such contacts occurred in 1990 or later.

Respondents were located with assistance from several national and local lesbian and gay advocacy and service organizations. In all, 2,100 court users

were identified and sent survey questionnaires; 58 percent completed the survey, for a total sample size of 1,225.

Survey of California Court Employees

The second survey was designed for employees of the California court system, regardless of sexual orientation, including court clerks, reporters, administrators, attorneys, and others. The survey instrument was designed to determine whether employees 1) observed negative behaviors toward gay men or lesbians in the workplace, either in open court or in other work settings; 2) experienced negative actions or heard negative comments directed toward themselves based on their actual or perceived sexual orientation; 3) experienced discrimination based on their sexual orientation; and 4) believed that gay men and lesbians are shown equal treatment and respect in the courts. The survey asked respondents to comment on their experiences over the past year only.

The survey questionnaire was administered in the summer and fall of 1998 to a sample of 5,500 employees. About 28 percent returned the survey, for a final sample of 1,544. Of these, 64 (4 percent) identified themselves as lesbian, gay, or bisexual.

Major Findings

The results support the following conclusions.

Court Users

- Eighteen percent of respondents to the court user survey experienced or witnessed negative incidents toward gay men or lesbians during their most recent contact with the courts. The most common negative incident was ridicule, snickering, or jokes based on sexual orientation. Fourteen percent of respondents felt that sexual orientation was used to devalue the credibility of a participant in a judicial proceeding.
- When the analysis of respondents' most recent contact with the courts was limited to those cases in which sexual orientation became an issue, the percentage of respondents experiencing or witnessing negative incidents toward gay men or lesbians increased substantially. Under these circumstances, 30 percent reported at least one negative incident. Similarly, in cases where the respondents' sexual orientation was disclosed to the court, 42 percent reported at least one negative incident.
- More than one in ten respondents felt forced to reveal their sexual orientation against their will during their most recent contact with the courts. Almost as many indicated that someone else stated their sexual orientation without their approval.

- Questions posed to participants in court proceedings do not routinely recognize the life situations of gay men and lesbians. For example, 26 percent of respondents were asked their marital status during their most recent contact with the courts, but only 7 percent were asked if they had a domestic partner.
- Despite generally positive direct experiences, most respondents perceive the courts as less open and fair to lesbians and gay men than to non-gay users. More than one quarter feel the courts do not provide adequate access, and half believe that the courts are unsuccessful in providing fair and unbiased treatment to gay men and lesbians.

Court Employees

- Most employees responding to the survey did not observe or hear negative actions or comments directed toward gay men or lesbians in the courts during the past year. Nevertheless, almost one in five (19 percent) observed negative actions or comments in open court, and 32 percent observed negative actions or comments in other work settings. About the same proportions observed positive actions or comments toward lesbians or gay men. Gay and lesbian respondents were more likely than heterosexual respondents to report observing negative actions or comments directed toward lesbians or gay men.
- Relatively few respondents intervened in response to negative actions or comments directed toward gay men or lesbians at work. Almost half (48 percent) took no action in response to negative behaviors occurring in open court, while 65 percent took no action in response to negative behaviors occurring in other work settings. These respondents were most likely to indicate that they did not perceive the situation as serious enough to warrant intervention, that nothing constructive would come of intervening, or that it simply never occurred to them to intervene. About one in ten did not know how to intervene.
- Employees who did intervene in response to negative actions or comments directed toward lesbians or gay men at work used a variety of strategies, many of which were indirect (for example, talking to a friend). Under 15 percent confronted the person engaging in the negative behavior, fewer than 5 percent reported the incident(s) to a superior, and 1 percent consulted a legal or employment advisor. Nonetheless, 40 percent of respondents reported that their interventions were effective in reducing or stopping the negative behaviors in open court, and over half (54 percent) reported that their interventions were effective in reducing or stopping the negative behaviors in other work settings.
- About 7 percent of all respondents reported experiencing negative actions or comments based on their sexual orientation during the past year. However, when the analysis was restricted to lesbian, gay, and bisexual

respondents, the proportion experiencing negative actions or comments based on sexual orientation increased to over 20 percent. In addition, 18 percent of lesbian respondents and 21 percent of gay men, but only 2 percent of heterosexual respondents, felt discriminated against at work on the basis of sexual orientation.

- Over half (58 percent) of those experiencing negative actions or comments based on their sexual orientation and almost two-thirds (65 percent) of those experiencing discrimination took some action. Those who did not act were most likely to indicate that the situation was not serious enough to warrant intervention or that nothing constructive would come of intervening.
- Those who intervened in response to negative behaviors or discrimination based on their sexual orientation used a variety of strategies. Of those who were the target of negative actions or comments, 25 percent confronted the individual responsible, 16 percent reported the incident(s) to a superior, and 10 percent confronted a legal or employment advisor. Among those experiencing discrimination, 16 percent confronted the individual responsible, 14 percent reported the discrimination to a superior, 8 percent began looking for another job, and 5 percent consulted a legal or employment advisor. Only a minority of those who intervened were successful in reducing the negative behaviors or discrimination: 35 percent reported that the negative behaviors decreased or stopped, and 17 percent reported that discrimination decreased or stopped.

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In 1997, the SSOF contracted with the authors to help conduct a study of the ways in which actual or perceived bias based upon sexual orientation affects the quality of justice in the California court system. The goal of the research was to determine the extent to which certain key groups have experienced or witnessed sexual orientation bias based on their interactions with the court system.

- Gay and lesbian users of the California courts; and
- Court employees.

To our knowledge, this is the first study of its kind. Past research on sexual orientation fairness and the judicial system has focused on different, albeit related, issues.

1

BACKGROUND

Lawyer Surveys

Although a complete review of the literature on sexual orientation and the law is well beyond the scope of this report, a small subset of this literature addresses issues of direct relevance to our work. For example, several projects have surveyed lawyers about their experiences, observations, and attitudes relevant to sexual orientation bias.

The Special Committee on Lesbians and Gay Men in the Legal Profession, a committee of the New York City Bar Association, administered a survey of sexual orientation fairness to 1,100 Legal Aid Society lawyers in 1994. Of the 229 respondents, over one-third (38 percent) had frequently or sometimes heard jokes about gay men and lesbians, and almost as many (30 percent) had heard derogatory names used in relation to sexual orientation. In contrast, fewer than one-fifth of the responding lawyers reported hearing positive remarks or seeing positive treatment of gay and lesbian individuals. The committee concluded:

“The survey revealed that there are many instances of anti-gay and lesbian bias and some instances of discrimination in the court system. Although jokes and ridicule are the most frequently cited and are evidence of bias, there were also a number of discriminatory actions noted.” (See p. 10.)

On this basis, the committee recommended several actions intended to increase sexual orientation fairness in the courts: 1) that court personnel must be required to treat gay men, lesbians, and transvestites with equal respect; 2) that sensitivity training be provided for court personnel; 3) that the courts adopt clear guidelines and rules prohibiting biased comments and acts of discrimination based on actual or perceived sexual orientation; and 4) that further studies be conducted. (See p. 11.)

A 1994 survey of members of the Massachusetts Lesbian and Gay Bar Association focused on the employment experiences of lesbian and gay attorneys. Results from 64 attorneys indicated that 31 percent had personally experienced discrimination in the workplace, and 22 percent believed that being lesbian or gay could hinder career advancement.

Also in 1994, the Committee on Sexual Orientation Bias of the Los Angeles County Bar Association surveyed both attorneys and employers (primarily law firms) about sexual orientation fairness in the workplace. Well over 20 percent of respondents had observed or experienced sexual orientation discrimination against an attorney in a work-related setting. This

discrimination was manifested in recruitment and hiring, the work environment, work assignments, evaluation, advancement opportunities, retention, compensation, and benefits. The findings led the committee to recommend that employers take steps to increase fairness and equity in the workplace. The committee also urged the Bar Association to show leadership in reducing bias and discrimination toward gay men and lesbians.

More recently, the Task Force on Gay and Lesbian Issues established by the State Bar of Arizona conducted a study of “the atmosphere for gays and lesbians involved in or having contact with the justice system in Arizona” (1999, p. 1), surveying judges, lawyers, court personnel, law enforcement officers, and the gay and lesbian community at large. In all, 1,134 surveys were completed. The results indicated to the task force that “Lesbians, gay men and bisexuals are at a substantial disadvantage in all contacts with the justice system” (p. 1). For example, 77 percent of the judges and attorneys participating in the survey had heard disparaging remarks about gays and lesbians, and 30 percent believed that lesbians and gay men are discriminated against in the legal profession. Over one in ten (13 percent) had observed negative treatment in open court toward those who were perceived as gay men or lesbians, while 45 percent had heard negative comments about gay men or lesbians in the context of a particular case. Results for the lesbian and gay community at large revealed that 19 percent felt discriminated against by the legal/justice system, and 22 percent had witnessed discrimination against gay men or lesbians within the legal/justice system.

These surveys suffer from a number of methodological problems. In particular, small sample sizes and low response rates limit the extent to which findings can be generalized to a population within each state. Additionally, some survey questions are unclear and can be interpreted in a number of different ways. For example, questions such as “Have you ever felt discriminated against in any contact with the legal/justice system due to your sexual orientation?” may elicit negative responses even among those who have had many positive contacts with the legal/justice system and thereby produce an unduly negative portrait. Finally, as with any survey, results reveal the respondents’ perceptions, attitudes, and beliefs—which may or may not be accurate. Despite these problems, these surveys demonstrate that substantial numbers of gay and lesbian lawyers and nonlawyers are concerned about sexual orientation bias in the courts.

With the exception of the Arizona project, these surveys were administered to lawyers only. None address such users of the courts as jurors, witnesses, parties to civil suits, those using the courts for simple transactions (for example, paying a fine), and court employees. This project fills this gap by focusing on these understudied populations.

Other Surveys

This report cannot review the vast literature on fairness and equity in the courts. However, of special relevance are two studies that were sponsored, like this one, by the Judicial Council of California's Advisory Committee on Access and Fairness in the Courts.

The Access for Persons with Disabilities Subcommittee conducted a comprehensive study of access and fairness of the California courts for persons with disabilities (1997). Methods included telephone surveys of the California public, mail surveys of court users, and qualitative interviews. Almost 3,000 individuals participated in the study through one or more of these methods. Respondents included people with and without disabilities, those working in the court system and elsewhere, and those active in disability-related organizations as well as those with no such involvement. Results indicated that the California courts had achieved "limited success" in meeting the tenets of the Americans with Disabilities Act. A majority of respondents believed that persons with disabilities had less access to the courts than others. Sixty percent believed that "more needs to be done" to provide access to the courts for persons with disabilities (pp. 3-3-3-4).

The California Judicial Council also sponsored a study of racial and ethnic bias in the courts overseen by the Advisory Committee on Racial and Ethnic Bias in the Courts. This study included telephone and mail surveys of the general California population (stratified by ethnicity), judicial officers and other top administrators of the courts, and attorneys who had expressed interest in minority legal affairs. Data was collected between 1991 and 1992.

Results indicated that perceived fairness of the California courts varied by race, with the lowest ratings provided by African Americans and the highest by Asians and Hispanics. Across all groups, the courts were perceived as less fair to African Americans and Native Americans than to other groups. These concerns extended across a wide range of issues, such as access to information about the courts, discrimination directed toward attorneys, treatment of minority defendants, jury composition and deliberations, hiring and promotional opportunities for court employees, and access and treatment of non-native English speakers.

Methodologically, these studies are noteworthy for their relatively large samples, use of multiple methods, and broad scope. This enabled comparisons across various subgroups. Low response rates limit the degree to which findings can be generalized to the overall state population.

This past work sponsored by the California Judicial Council has assessed access to and fairness of the California courts for women, people with disabilities, and people from different racial and ethnic groups. The current project adds to these analyses by focusing on gay men and lesbians.

METHODOLOGY

Two surveys were conducted to assess the fairness of the California court system to lesbians and gay men. One survey was administered to California court users, including jurors, witnesses, litigants, defendants, lawyers, and those using the courts to pay fines or file papers. The other survey was administered to court employees, including court administrators, court reporters, court clerks, administrators, bailiffs, and attorneys.

Although different methods and different questionnaires were used for each survey, they share a number of important features:

- Both surveys are focused on the California court system, with an effort to obtain respondents from every part of the state, both north and south, urban and rural.
- Both surveys emphasize the respondents' direct experiences, behaviors, and observations as opposed to general attitudes or beliefs. The survey results, therefore, tell us what actually happened to or was observed by respondents as opposed to what they believe happens to others.
- Both surveys enable comparisons across subgroups based on geographic location, type of court, and characteristics of the individual respondent (for example, sexual orientation, gender).
- To ensure balanced findings, both surveys ask respondents to describe positive as well as negative experiences using the courts.
- For reasons that will be discussed in more detail later in this section, neither sample can be considered truly representative of the total population of interest. However, the relatively large number of respondents renders the findings of policy significance even without generalization to a broader population. Additionally, the comparisons across different subgroups enable us to draw reasonable inferences about access and fairness for various groups under various sets of circumstances.
- Both survey instruments were based on exploratory research, including focus groups with gay men and lesbians and in-depth interviews with legal and other experts on issues related to sexual orientation and the courts.

- Due to the sensitive nature of the survey questions, both questionnaires were administered anonymously. In this way, we tried to create a feeling of safety so respondents could respond as fully and openly as possible.

User Survey

The user survey instrument was designed to assess the experiences of gay and lesbian users of the California courts. Specific questions the survey was designed to address include:

- Did gay men or lesbians experience or observe bias, discrimination, ridicule, or discomfort based on sexual orientation while using the California courts?
- Did lesbians or gay men experience or observe positive speech or actions based on sexual orientation while using the California courts?
- Were gay men and lesbians shown equal treatment and respect in the courts?

Sample

The population of interest for this survey was gay and lesbian users of the California courts. To ensure that recollections would be reasonably accurate and timely, we limited “users” to those who had used a California court in the 1990s. The major challenge we faced was reaching this population. To do so, we used a two-step approach:

1. We contacted the Human Rights Campaign (HRC) and the National Gay and Lesbian Task Force (NGLTF) and requested names and addresses of their membership in California. Both organizations have a predominantly gay and lesbian membership of approximately 20,000 and 5,000 members in California, respectively. Both organizations agreed to cooperate, and we obtained their mailing lists. The AOC sent a short screening questionnaire to a random sample of the HRC California members and all NGLTF members (no effort was made to eliminate duplicates). This screening survey was mailed in February 1998; a copy of the survey is attached in Appendix A. The screening form asked if recipients had used a California court since 1990, and if so, if they would be willing to complete a questionnaire about their experiences. In addition, we asked all members of the SSOF and selected leaders of organizations for lesbians and gay men to disseminate screening forms to clients and associates. In total, approximately 11,000 screening surveys were distributed, and 3,300 individuals responded. Of these, about 2,100 responded affirmatively that

they had contact with a California court and would be willing to complete a full survey about their experiences and provided usable contact information.

2. The survey instrument was administered by mail in May 1998 to all 2,100 individuals who returned the screening questionnaire. Due to the sensitive nature of the questions, the survey was anonymous, and therefore no follow-up was possible. Based on this single mailing, 1,225 responses were obtained, for a response rate of 58 percent. The extent to which these respondents are representative of the HRC and NGLTF is unknown. As will be discussed in more detail in the results section, the sample is unlikely to be representative of the total population of lesbians and gay men in California.

Survey Instrument

The survey instrument is displayed in Appendix A.

The survey consisted of four sections:

- I. Introduction. A screening section to eliminate those who had not had a contact with a California court.
- II. Most recent contact with a California court. Questions about the experiences of the respondent in court or the courthouse on the most recent occasion the respondent had been in contact with a California court.
- III. Another of the respondent's contacts with the California courts. Questions for those respondents who had more than one contact with a California court, focusing on another contact in which sexual orientation became an issue or concern for the respondent.
- IV. Background and opinions. Questions about the respondent's background characteristics and perceptions about the fairness of California courts to lesbians and gay men.

After an introductory section designed to eliminate respondents who had not, in fact, had a contact with a California court, the survey asks about respondents' *most recent* contact with a California court. The subsequent section asks about any other contact with a California court in which sexual orientation became an issue or concern to the respondent.

By asking respondents to report on their most recent contact, we avoid undue bias in the results by encouraging reporting about positive, neutral, and negative experiences. In other words, the results provide a profile of a "typical" experience with the justice system for gay men and lesbians.

In addition to “typical” experiences, it is also important to determine instances that, however unusual, may influence the perceived and actual fairness of the courts to lesbians and gay men. Thus, we also invited respondents to report on another experience with the courts in which sexual orientation became an issue, thereby enabling them to share incidents that may deserve attention and correction. The questions in both sections of the questionnaire were similar and concerned respondents’ type of contact with the court, the type of court, the date and duration of the contact, and respondents’ experiences and observations, both positive and negative.

The final section of the questionnaire asked respondents for background information, including demographics and attitudinal ratings of the overall fairness of the courts to lesbians and gay men.

Analysis

Two kinds of analysis were conducted. First, we reviewed results for the total sample, after dropping a small number of respondents who indicated that they were heterosexual. Second, we drew comparisons among different subgroups of the sample to determine how responses varied as a function of individual or court-related variables. The factors we examined include:

- Gender;
- Race;
- Age;
- Education level;
- Community type (urbanicity) of the court used;
- Reason for using the court;
- Whether the respondent had an in-court or out-of-courtroom experience¹;
- Whether the respondent had direct involvement in a case²; and
- Type of court.

We present only differences that are statistically significant. In other words, we report only differences between groups that we can be fairly certain are true differences between the groups rather than random occurrences. To our surprise, responses did not significantly differ between lesbians and gay men or between those of higher versus lower socioeconomic status (income and

¹ An in-court experience included observing or participating in a case as a juror, attorney, witness, victim, or defendant. An out-of-courtroom experience included reporting to jury duty but not serving, paying a fine, or filing papers.

² A direct participant in a case was someone who participated in a case as juror, attorney, witness, victim, or defendant.

educational level). We also did not find any differences between those using urban versus rural or suburban courts. The major differences appeared to be a function of the court experience itself.

Employee Survey

Our second survey consisted of questions to various kinds of court employees designed to record their observations and experiences working in California courts. Specific issues the survey was designed to address include:

- Had employees observed bias, discrimination, ridicule, or discomfort based on sexual orientation, either in open court or in the courthouse?
- Had employees themselves experienced bias, discrimination, ridicule, or discomfort based on sexual orientation, either in open court or in the courthouse?
- Did employees themselves experience or observe positive speech or actions toward gay men or lesbians?
- Did employees believe that the workplace was respectful of gay men and lesbians?

Sample

The population of interest for this survey was court employees, *regardless of sexual orientation*. To ensure that recollections would be reasonably accurate and timely, we limited recollections to the past year—that is, the 12 months before the survey was administered, roughly fall 1997 to fall 1998.

The survey instrument was administered by mail in August and September of 1998 to 5,500 of the roughly 17,000 individuals who work in the courts. The sample was obtained from various employee associations, unions, or names on file at the Administrative Office of the Courts. Survey recipients included administrators, clerks, court reporters, referees, research attorneys, bailiffs, and clerical staff.

In contrast to other employee surveys sponsored by the Judicial Council, this survey reached a broader range of staff, particularly clerical and support staff. Another difference is that the Administrative Office of the Courts administered the survey directly to employees rather than asking court administrators, unions, or others to administer it.

Due to the sensitive nature of the questions, the survey was anonymous, and therefore no follow-up was possible. Based on this single mailing, 1,544 responses were obtained, for a response rate of 28 percent.

Numerous court employees reacted very negatively to the request that they complete the survey. For example, Judicial Council staff fielded several dozen telephone calls and received over a dozen letters or memos from respondents who were offended by the survey or considered it a “waste of taxpayers’ dollars.” This negative reaction, far in excess of the reaction to other employee surveys that the Judicial Council has administered, suggests that an unknown but significant number of nonrespondents are, at best, unconcerned about sexual orientation fairness in the courts. This issue is discussed in more detail in the results that follow.

Survey Instrument

The survey instrument is displayed in Appendix B.

The survey consisted of four sections:

- I. Introduction. Questions about the kind of employment the respondent had in the court system.
- II. Observations at work. Questions about respondents’ observations of people other than themselves in court and in the courthouse.
- III. Personal experiences at work. Questions about the respondent’s own experiences at work.
- IV. Opinions and background. Questions about the background of the respondent and views on fairness in the courts.

After determining the respondent’s role in the court system, the questionnaire asked about the respondent’s observations and personal experiences. As with the user survey, we tried to avoid undue bias in the results by encouraging reporting about more than just negative experiences. The survey requested that *both* heterosexual and gay respondents answer *all* questions.

The final section of the questionnaire asked respondents for background information, including demographics and perceptions about the fairness of the courts as workplaces for lesbians and gay men.

Analysis

Two kinds of analyses were conducted. First, we reviewed results for the total sample. Second, we drew comparisons among different subgroups of the sample to determine how responses varied as a function of individual or court-related variables. The factors we examined include:

- Sexual orientation;
- Gender;
- Type of court appointment;

- Type of court;
- Education level;
- Community type (urbanicity) of court; and
- Whether respondent observed court daily or less than daily.

In the results that follow, only differences that achieved statistical significance are presented. In other words, we report only differences between groups that we can be fairly certain are not caused by random occurrences. Relatively few differences between subgroups were found.

COURT USER SURVEY RESULTS

Characteristics of the Sample

A majority of respondents were male (69 percent), white (90 percent), and living in an urban area (66 percent). In addition, the respondents were generally well educated and affluent. Over three-quarters (83 percent) had completed college, and almost half (48 percent) reported individual incomes of at least \$60,000 per year. Thus, this sample cannot be considered representative of all lesbians and gay men in California, or even all lesbian and gay users of the courts.

About 5 percent of the respondents indicated that they were heterosexual and were excluded from most of the analyses that follow. More than nine in ten (91 percent) were lesbians or gay men, and 3 percent were bisexual. Few of the respondents were completely closeted; most were “selectively out” (61 percent), and many (38 percent) were “totally out.”

Most respondents were infrequent users of the courts. Seventy percent had used the courts three times or less since 1990, and only 12 percent had used the courts more than once per year on average during the 1990s; 4.5 percent said they had “no contact” with the courts, and they are excluded from the analyses.

Tables 1 through 3 provide a statistical profile of the sample.

Table 1
Court Users
Respondent Characteristics

Respondent Characteristics	Percentage
Female	30.7
Chronic medical condition or disability	22.4
<i>Race/Ethnicity</i>	
American Indian/Native American	1.3
Asian, Asian American, Pacific Islander	2.4
Black, African American	1.0
Chicano/a, Latino/a, Hispanic	3.3
White (non-Hispanic)	89.9
Other	1.9
<i>Sexual Orientation</i>	
Lesbian or gay man	91.2
Bisexual	3.3
Heterosexual	5.4 ¹
Other	0.1
<i>Domestic Situation</i>	
Legally married to or living with partner of opposite sex	4.7
Living with same-sex partner	51.4
Single, not living with spouse or partner	38.6
Other	5.4
<i>Highest Educational Level</i>	
High school graduate or less	1.5
Some college	15.2
Bachelor's degree	37.1
Graduate degree	46.3
<i>Individual Annual Income</i>	
Under \$50,000	38.0
\$50,000–100,000	41.6
Over \$100,000	20.4
<i>Urbanicity</i>	
Live in urban area	65.6
Live in suburban area	29.3
Live in rural area	5.1

N = 1,225

¹ These respondents were excluded from subsequent analyses

Table 2
Lesbian and Gay Court Users
Degree to Which Lesbian and Gay Respondents Are
Open About Their Sexual Orientation

Aspect of Life	Percentage Totally Open	Percentage Selectively Open	Percentage Not Open
At work	53.8	39.0	7.2
To your family	71.4	23.2	5.4
To your friends	81.1	18.1	0.6
In your community	54.7	36.8	8.5
In recreational activities	58.9	37.0	4.2
In all aspects of your life	37.5	60.7	1.8

N = 1,154

Table 3
Lesbian and Gay Court Users
Frequency of Contact with California Courts Since January 1, 1990

Frequency	Percentage
Not at all	4.5
Once	27.3
Two to three times	43.2
Four to seven times	13.5
Eight to fifteen times	3.4
More than fifteen times	8.2

N = 1,103

Lesbian and Gay Respondents' Most Recent Contact with a California Court

Sixty percent of respondents had their most recent contact with a California court in 1997 or 1998. Hence, the recollections reported in this section should be relatively fresh in respondents' memories.

As shown in Table 4, almost half the respondents (43 percent) most recently used a criminal court, while about one-third used a civil court. Smaller numbers used other courts, including traffic, small claims, family law, or juvenile.

Most respondents (60 percent) used the court for jury duty (Table 5). These were about evenly divided between those who actually served on a jury and those who were not selected to do so. Following in frequency were those participating in a civil court proceeding (7 percent), paying a fine or filing papers (7 percent), or arguing a case or representing a client in court proceedings (6 percent). About 19 percent were involved in cases that pose special issues related to sexual orientation. These included adoption/parenting issues involving lesbian or gay parents, lewd conduct, hate crimes against lesbians or gay men, domestic violence involving a gay man or lesbian, employment discrimination, and so forth.

Disclosure of Personal Information

Respondents were asked whether they were questioned about and if they revealed their marital status, household composition, or sexual orientation during their most recent court contact. These questions are important for several reasons. Questions about marital status disregard the life situations of many lesbians and gay men. Not only can such questions cause distress to the individual, but they may also deprive the court of important information. Table 6 indicates that 26 percent of the respondents were queried about their marital status. Of these, about 45 percent were asked by a lawyer and about 45 percent by a judge (with the remainder asked by other court employees or noncourt employees). In contrast, only 7 percent were asked if they had a domestic partner, spousal-equivalent relationship, significant other, or lover.

Analysis of the sample subgroups indicates that those who had an in-courtroom contact—that is, were actually observing or participating in a court proceeding (as juror, victim, witness, defendant, or attorney) as opposed to paying a fine, filing papers, or waiting to be questioned for jury duty—were more likely to be asked their marital status than others. Over one-third (34 percent) of respondents who had an in-courtroom contact were asked if they were married versus just 20 percent who had a contact out of the courtroom; 9 percent of respondents who had an in-courtroom contact were asked if they had a domestic partner, versus only 2 percent of those who had a contact out

of the courtroom. If one looks only at those who either served on a jury or who were questioned for a jury, 48.3 percent were asked if they were married.

Only 3 percent of respondents were asked their sexual orientation; of these, three-quarters indicated that a lawyer asked this question. Subgroup analyses reveal, however, that this response was confined entirely to those who had an in-courtroom contact—that is, 5 percent of those with an in-courtroom contact were asked their sexual orientation, whereas no one with an out-of-courtroom contact was asked. We cannot determine from the questionnaires whether the question was appropriate in context, but the results stimulate us to question when or whether individuals should be asked to reveal their sexual orientation in court.

Fourteen percent of respondents told someone their sexual orientation during their most recent contact with the court. Most of these (55 percent) told a lawyer, 38 percent told a judge, and 18 percent told another court employee. Many told more than one person in the court. When the analysis was restricted to those with in-courtroom contacts, 20 percent told someone their sexual orientation (7 percent of those with an out-of-courtroom contact). Thus, although some gay men and lesbians disclosed their sexual orientation voluntarily, most did not.

Table 4
Lesbian and Gay Court Users
Type of Court in Which Most Recent Contact Took Place

Type of Court	Percentage
Criminal	43.3
Civil	32.4
Traffic	8.2
Small claims	4.7
Family law	4.4
Juvenile	1.2
Probate	1.0
Appellate	0.7
Other	4.0

N = 1,064

Table 5
Lesbian and Gay Court Users
Nature of Most Recent Contact with a California Court

Nature of Contact	Percentage
Served on a jury	24.9
Reported to court for jury duty; was questioned for a jury but was not selected to serve	18.7
Reported to court for jury duty but was not questioned for a jury or selected to serve	16.5
Participated in a civil court proceeding as a party to the case	7.4
Paid a fine or filed papers	6.6
Argued a case or represented a client in court proceedings	5.7
Participated in a court proceeding as a witness	4.5
Participated in a criminal court proceeding as a defendant	4.2
Participated in a court proceeding as a victim	2.4
Observed court proceedings but did not directly participate	2.0
Other contact	7.2

N = 1,154

Table 6
Lesbian and Gay Court Users
Percentage Reporting Various Experiences During Their Most Recent Contact with a Court

Type of Experience	Percentage
Was asked if married	26.1
Was asked if had a domestic partner	6.8
Was asked to indicate sexual orientation	3.0
Told someone sexual orientation	14.4

N varies from 1,022 to 1,152 depending on the item.

Respondents' Observations and Experiences

Respondents were asked whether they experienced or observed a variety of negative or positive behaviors or comments directed toward people perceived to be gay or lesbian (including themselves) during their most recent contact with the court. Almost one out of five (18 percent) respondents experienced or witnessed a negative incident toward gay men or lesbians during their most recent contact with the courts. The most common (experienced by 12 percent) was ridicule, snickering, or jokes. Slightly fewer (9 percent) heard others use derogatory terms or make derogatory comments about lesbians or gay men, and 8 percent heard others make negative comments directed toward another person who was (perceived to be) a gay man or lesbian.

Most of the negative comments or behaviors were attributed to people other than judges, lawyers, or court employees. For example, of those who heard ridicule, snickering, or jokes about lesbians or gay men, 6 percent attributed the behavior to a judge, 27 percent to a lawyer, 32 percent to another court employee, and 58 percent to another individual. (These sum to over 100 percent because several people may have been involved: for example, a lawyer in conversation with a court employee). Similar patterns apply to the other items. Note that most contacts with the court involve more exposure to lawyers than to judges, thereby providing respondents with more opportunity to observe or experience negative (and positive) incidents toward lesbians and gay men.

Negative incidents were much higher among those with in-courtroom experiences. Table 8 shows the responses to the items in Table 7 separately for those who had an in-courtroom contact versus those who had an out-of-courtroom contact. Overall, those with an in-courtroom contact were three times more likely to report negative comments or actions than were those with an out-of-courtroom contact. Differences between the two groups were least pronounced on items such as “ridicule, snickering, or jokes” and “use of disparaging gestures,” where the in-courtroom reports were about twice as high as reports from those with an out-of-courtroom contact. The biggest differences were on more personal items—negative comments or actions about the respondent and, not surprisingly, negative remarks about gay men or lesbians arising from a case.

Similarly, direct participants in a case tended to report a higher likelihood of negative incidents. For example, 14.0 percent of direct participants reported ridicule versus 12.0 percent for the whole sample of lesbian and gay court users, 5.3 percent reported negative comments about themselves compared to 4.2 percent for the sample overall, and 8.0 percent of direct participants reported negative actions versus 6.4 percent overall.

Similarly, the likelihood that respondents reported any kind of negative incidents varied according to whether they themselves had disclosed their sexual orientation and also whether sexual orientation had become an issue

during the case. For example, sexual orientation was reported to have become an issue in a little under 25 percent of the most recent court contacts, and of those individuals, almost 30 percent had observed at least one negative incident. In the remaining cases, the likelihood of reporting a negative incident was 14 percent. In the 15 percent of cases in which the respondents' sexual orientation was revealed, 42 percent reported at least one negative incident versus 14 percent reporting any negative incident when sexual orientation was not revealed.

Many fewer respondents saw or heard positive incidents directed toward gay men or lesbians. Only 6 percent reported any such incident. As Table 9 indicates, fewer than 3 percent of respondents responded affirmatively to any of the questions about specific positive comments or actions.

Open-ended responses, where respondents were asked to provide some detail about the incidents they were reporting, shed further light on these court experiences. The majority of those commenting noted that sexual orientation issues did not come up in any way while the respondent was using the court. For example:

I felt I was treated no differently by anyone (judge, fellow jurors, etc.) even though they knew I was a lesbian.

I do not remember any comments or innuendoes about gays/lesbians.

My jury service seemed to be a gay-neutral event.

My most recent contact was paying a traffic ticket. Everyone was very nice. No one noticed/asked my sexual orientation. It did not and should not come up.

Others, however, reported negative experiences that were embarrassing, hurtful, or potentially discriminatory. For example:

I was a jury prospect but it was evident that the defense lawyer didn't want gays on the jury. One of his questions to me during selection was: Mr. X, would you say you have more straight friends or gay friends? I was discharged.

Two people (one lesbian, one transgender) were questioned and immediately released from the jury room by the lawyer.

Two attorneys in the hall outside of courtroom were talking. One said, "did you see that?" This was followed by a joke, then laughing. Bailiff joined attorneys briefly—all laughed.

A jury member suggested that witness was gay and therefore his testimony could not be trusted.

Another prospective juror told an anti-gay joke in the waiting area before going to the courtroom. No court employees were present at the time.

The case was one involving domestic violence between two gay male partners. During questioning by the judge and lawyers, several of the prospective jurors made disparaging remarks about gay “lifestyles.” Several also didn’t believe that physical abuse in a gay couple was as serious as in a heterosexual couple. The judge asked all prospective jurors to state marital status and what their spouse’s occupation was. I have a long-term domestic partner, so I felt that answering the question honestly required me to reveal my sexual orientation and to state my partner’s occupation even though legally my marital status is single. Stating “single” would have felt like lying.

In a domestic abuse case, the judge did not ask me the same questions she asked other potential jurors regarding my relationship with my companion or my experience with domestic abuse.

I was in line and two clerks and a cop were trading jokes and talking about cases and people who were gay, using four-letter words.

A small number of respondents described positive incidents, such as the following:

I was a witness in a male-on-male rape case. The assistant district attorney and staff were very respectful about sexual orientation.

[From a victim of same-sex domestic violence:] My public defender and the judge were both very fair and did not seem prejudiced at all. This made it much easier for me to go to open court.

When interviewing jurors, the judge asked if we were married or had a live-in partner. The atmosphere was very comfortable.

It was a most amazing Voir Dire I’d experienced. Potential jurors openly discussed their relationships. The judge showed highest respect for gay unions/relationships. [It was] a wonderful experience.

As a lesbian couple, we had a very positive experience with our second parent adoption. The judge . . . was very warm and supportive.

I received positive comments as a parent. The judge and lawyer made a point of notifying my ex that sexual orientation is not an issue in family law.

Finally, respondents were asked whether they were verbally abused or physically threatened due to their sexual orientation during their most recent contact with the courts. Only 4 percent reported verbal abuse, and none were physically threatened. Half of those who experienced verbal abuse indicated that the abuser was someone other than a lawyer, judge, or court employee. One-quarter felt verbally abused by a lawyer, 20 percent by a court employee, and about 8 percent by a judge. (Note that these numbers sum to over 100 percent because a small number of respondents reported abuse by more than one individual: for example, a lawyer in conversation with a court employee.)

Table 7
Lesbian and Gay Court Users
Percentage Who Saw or Heard *Negative* Comments or Actions Toward Gay Men or Lesbians During Their Most Recent Contact with a California Court

Type of Comment or Action	Percentage Who Saw/Heard	If Yes, by Whom? ¹			
		Judge	Lawyer	Employee	Other ²
Ridicule, snickering, or jokes about lesbians and/or gay men	12.0	5.9	26.5	32.4	58.1
Use of derogatory terms or comments about lesbians or gay men	9.0	2.0	24.8	25.7	60.4
Negative comments about someone else who is a lesbian or gay man	8.3	9.7	28.0	34.4	46.2
Other negative remarks about gay men or lesbians	7.7	3.4	24.1	29.9	57.5
Negative actions toward you because you are a lesbian or gay man	6.4	23.6	44.4	20.8	37.5
Negative remarks about gay men or lesbians arising from a case	5.2	10.3	48.3	15.5	39.7
Negative comments about you because you are a lesbian or gay man	4.2	12.8	42.6	31.9	42.6
Negative actions toward someone else who is a gay man or lesbian	3.9	18.2	25.0	22.7	52.3
Use of disparaging gestures toward gay men or lesbians	2.6	3.4	17.2	31.0	55.2

N varies from 1,120 to 1,130 depending on the item.

¹ Row percentages may sum to over 100 percent because some respondents checked more than one category.

² The majority of "Other" responses refer to other court users.

Table 8
Lesbian and Gay Court Users
Percentage Who Saw or Heard *Negative* Comments or Actions Toward Gay Men or Lesbians by In- or Out-of-Court Contact During Their Most Recent Contact with a California Court

Type of Comment or Action	Percentage Who Saw or Heard:	
	In-Courtroom Contact	Out-of-Courtroom Contact
Ridicule, snickering, or jokes about lesbians and/or gay men	15.7	8.4
Use of derogatory terms or comments about lesbians or gay men	12.4	5.9
Negative comments about someone else who is a lesbian or gay man	10.8	4.5
Other negative remarks about gay men or lesbians	9.5	5.7
Negative actions toward you because you are a lesbian or gay man	10.0	2.7
Negative remarks about gay men or lesbians arising from a case	8.4	.7
Negative comments about you because you are a lesbian or gay man	6.8	1.6
Negative actions toward someone else who is a gay man or lesbian	5.3	1.8
Use of disparaging gestures toward gay men or lesbians	3.8	1.6

N varies from 984 to 991 depending on the item.

Table 9
Lesbian and Gay Court Users
Percentage Who Saw or Heard *Positive* Comments or Actions Toward Gay Men or
Lesbians During Their Most Recent Contact with a California Court

Type of Comment or Action	Percentage Who Saw/Heard	If Yes, by Whom? ¹			
		Judge	Lawyer	Employee	Other ²
Positive comments about you because you are a lesbian or gay man	2.6	34.5	55.2	13.8	17.2
Positive comments about someone else who is a lesbian or gay man	2.3	23.1	42.3	15.4	30.8
Positive actions toward you because you are a lesbian or gay man	2.2	36.0	44.0	28.0	12.0
Other positive remarks about gay men or lesbians	1.9	28.8	38.1	23.8	38.1
Positive remarks about gay men or lesbians arising from a case	1.6	33.3	33.3	5.6	33.3
Positive actions toward someone else who is a gay man or lesbian	1.2	21.4	28.6	14.3	35.7

N varies from 1,120 to 1,130 depending on the item.

¹ Some row percentages sum to over 100 percent because some respondents checked more than one category.

² The majority of "Other" responses refer to other court users.

Respondents' Attitudes

In addition to indicating whether they witnessed or experienced certain comments or behaviors, respondents were asked to indicate their level of agreement with various statements about their most recent court experience. Table 10 indicates the percentage of respondents who agreed with the various statements. Table 11 shows the mean rating per statement. Both ways of presenting the results indicate that a majority of respondents felt they were treated no differently than other users of the courts and were treated with respect by those who knew their sexual orientation. For example, three-quarters “agreed strongly” and another 14 percent “agreed somewhat” with the statement, “As far as I could tell, I was treated the same as everyone else.” Over half (55 percent) “agreed strongly” and 26 percent “agreed somewhat” with the statement, “I was treated with respect by those who knew my sexual orientation.”

A smaller number of respondents had less benign experiences during their most recent contact with the courts: 14 percent agreed that their sexual orientation was used to devalue their credibility, 11 percent agreed that sexual orientation was raised as an issue although it did not pertain to the case, about as many felt forced to state their sexual orientation against their will, and 9 percent reported that someone else stated their sexual orientation without their approval. Although these experiences were uncommon, they were not rare and therefore suggest the need for continued efforts to ensure fairness for lesbians and gay men using the courts.

Table 10
Lesbian and Gay Court Users
Percentage Who Agree Somewhat or Strongly with Various Statements About Their
Most Recent Contact with a California Court

Statement	Percentage Agreeing Somewhat or Strongly
As far as I could tell, I was treated the same as everyone else	89.2
I was treated with respect by those who knew my sexual orientation	80.4
I did not want to state my sexual orientation	59.7
I was comfortable about stating my sexual orientation	58.0
I felt threatened because of my sexual orientation	21.5
My sexual orientation was pertinent to the court proceedings	15.3
My sexual orientation was used to devalue my credibility	13.6
My sexual orientation was pertinent to my reason for using the court	11.7
My sexual orientation was raised as an issue even though it did not pertain to the case	11.2
I felt forced to state my sexual orientation against my will	10.5
Someone else stated my sexual orientation without my approval	8.6

N varies from 488 to 1,034 depending on the item.

Table 11
Lesbian and Gay Court Users
Mean Agreement Ratings for Various Statements About Most Recent Contact
with a California Court

Statement	Mean Rating¹
As far as I could tell, I was treated the same as everyone else	3.59
I was treated with respect by those who knew my sexual orientation	3.25
I was comfortable about stating my sexual orientation	2.71
I did not want to state my sexual orientation	2.68
I felt threatened because of my sexual orientation	1.62
My sexual orientation was pertinent to the court proceedings	1.44
My sexual orientation was used to devalue my credibility	1.42
My sexual orientation was pertinent to my reason for using the court	1.35
My sexual orientation was raised as an issue even though it did not pertain to the case	1.33
I felt forced to state my sexual orientation against my will	1.32
Someone else stated my sexual orientation without my approval	1.25

N varies from 488 to 1,034 depending on the item.

¹ Responses were based on a four-point scale, where 1 = disagree strongly and 4 = agree strongly.

Another Contact with the California Courts (in Which Sexual Orientation Was an Issue)

Whatever the quality of respondents' most recent contact with the courts, it is possible that a particular contact stands out for its positive or negative nature with regard to fairness toward gay men and lesbians. Such contacts, even if atypical, may point to issues deserving of attention. The survey questionnaire therefore invited respondents to answer a series of questions about a contact with a California court *other than* the most recent but occurring since 1990—one in which sexual orientation became an issue in some way. One hundred forty-eight respondents chose to answer this optional set of questions. This represents 13 percent of all the lesbian and gay respondents and 20 percent of the respondents who had more than one contact with California courts in the 1990s. This section presents these results.

Readers may be tempted to conclude that differences between the profile of “most recent” experiences and these earlier, “other” experiences are indicative of change over time. These “other” experiences were included in survey results specifically *because* sexual orientation became an issue in the case, however. Thus, the two sets of items do *not* provide the same type of profile, and hence differences between them should not be attributed to change over time or any other single factor.

As shown in Table 12, about one-third of the respondents described an experience in criminal court, while another third described a civil court experience. Fifteen percent described a family court experience, while smaller numbers based their responses on other courts.

About one-quarter (23 percent) of respondents used the court for jury duty (Table 13). Following in frequency were those participating in a civil court proceeding (16 percent), arguing a case or representing a client in a court proceeding (16 percent), or participating in a criminal court proceeding as a defendant (11 percent). Most were involved in cases that pose special issues related to sexual orientation (Table 14). These included adoption/parenting issues involving lesbian or gay parents (16 percent), lewd conduct (10 percent), hate crimes against lesbians or gay men (7 percent), family dissolution involving lesbian or gay family members (7 percent), domestic violence involving a gay man or lesbian (7 percent), employment discrimination (6 percent), and so forth. Due to the small number of respondents in each category, statistical comparisons by type of case are not possible.

Table 12
Lesbian and Gay Court Users
Type of Court in Which Another Contact with a California Court Took Place

Type of Court	Percentage
Criminal	35.4
Civil	33.3
Family law	15.3
Juvenile	6.3
Traffic	3.5
Other	2.8
Small claims	2.1
Probate	1.4
Appellate	0

N = 144

Table 13
Lesbian and Gay Court Users
Nature of Another Contact with a California Court

Nature of Contact	Percentage
Participated in a civil court proceeding as a party to the case	16.3
Argued a case or represented a client in court proceedings	16.3
Served on a jury	15.4
Other contact	12.2
Participated in a criminal court proceeding as a defendant	10.9
Participated in a court proceeding as a witness	6.8
Reported to court for jury duty but was not questioned for a jury or selected to serve	6.8
Participated in a court proceeding as a victim	4.8
Observed court proceedings but did not directly participate	5.4
Paid a fine or filed papers	2.7
Was employed by a California court	2.0

N = 147

Table 14
Lesbian and Gay Court Users
Percentage Reporting That Another Contact with a California Court Focused on
Certain Issues Relevant to Sexual Orientation

Type of Issue	Percentage
Other issues directly related to sexual orientation	17.6
Adopting/parenting/fostering involving lesbian or gay parent(s)	15.5
Lewd conduct of a gay man or lesbian	10.1
Family dissolution involving lesbian or gay family members	7.4
Hate crime in which a lesbian or gay man was a victim or intended victim	7.4
Domestic violence involving a gay man or lesbian	6.8
Employment discrimination based on sexual orientation	6.1
Wills, trusts, and estates involving gay men or lesbians	3.4

N = 148

Disclosure of Personal Information

Respondents were asked whether they were questioned about and whether they revealed their marital status, household composition, or sexual orientation. Table 15 indicates that 36 percent of the respondents were queried about their marital status. Of these, 56 percent were asked by a lawyer, 38 percent by a judge, and 18 percent by other court employees (with the remainder asked by noncourt employees). (The numbers sum to over 100 percent because some respondents were asked by two or more different people.) In contrast, 20 percent were asked if they had a domestic partner, spousal-equivalent relationship, significant other, or lover. Again, lawyers were most likely to ask this question, followed by judges and other court employees, respectively.

One in five (20 percent) of the respondents answering this section of the questionnaire were asked their sexual orientation; of these, three-quarters indicated that a lawyer asked this question. We cannot determine from the questionnaires whether the question was appropriate in context. Almost half (47 percent) told someone their sexual orientation during this contact with the court. Most of these (67 percent) told a lawyer, 40 percent told a judge, and 30 percent told another court employee. As these percentages indicate, many told more than one person in the court.

Table 15
Lesbian and Gay Court Users
Percentage Reporting Various Experiences During Another Contact with a
California Court

Type of Experience	Percentage
Was asked if married	36.0
Was asked if had a domestic partner	20.4
Was asked to indicate sexual orientation	20.4
Told someone sexual orientation	46.5

N varies from 139 to 148 depending on the item.

Respondents' Observations and Experiences

Respondents were also asked to indicate whether they experienced or observed a variety of negative or positive behaviors or comments directed toward people perceived to be gay or lesbian (including themselves) during this other contact with the court. Tables 16 and 17 display the findings.

More than half (56 percent) of the respondents reporting information on another contact with a California court experienced or witnessed a negative incident toward gay men or lesbians during their contact with the courts. The most common (experienced by 36 percent) was negative comments about someone else who is a lesbian or gay man. Of those reporting this experience, 51 percent reported that a lawyer made the negative comment, 18 percent reported that a court employee made the comment, 10 percent reported that a judge made the comment, and 41 percent reported that someone else made the comment. (Note that these percentages sum to over 100 percent because some respondents heard comments from several different people.)

Twenty-nine percent heard negative remarks about lesbians or gay men arising from a case, while 26 percent heard ridicule, snickering, and jokes, and 25 percent heard other negative remarks about gay men or lesbians. More than one in five of these respondents (23 percent) heard negative comments about themselves because they are lesbians or gay men. In each case, between one-third and one-half of those experiencing the negative incident reported that a lawyer was involved. Respondents were least likely to have heard negative comments from judges. Note that most contacts with the court involve more exposure to lawyers than to judges, thereby providing more opportunity to observe or experience negative (and positive) incidents toward lesbians and gay men.

Open-ended responses shed further light on these court experiences. As some of the following comments indicate, negative experiences with the police affected respondents' overall attitudes toward the court and legal system.

[A lawyer] questioned potential jurors about whether they would accept unbiased testimony from gay witnesses. The manner of question implied gays were unreliable witnesses, thus placing a bias in the minds of potential jurors.

This lawyer of the other party attempted to raise the issue of my/our sexual orientation to discredit me. This was not allowed.

All prospective jurors were asked about marital status. I have been in a monogamous relationship 33 years and consider myself married. It would have been wrong to deny my relationship but it would have been legal to do so.

A fellow juror made negative comments and joked about a court employee he suspected of being a gay man.

Negative remarks were made by opposing party (father and ex-husband) and his attorney in court documents regarding my client, a lesbian mother.

I was accused of touching an officer's pants in the groin area—I did not. After arresting me the officer stroked my chest with his hand.

My lover was entrapped at a gay cruise area along with several others, and the arresting officer's statements contained lies and negative comments.

Many fewer respondents among the group who provided information on another contact with a California court saw or heard positive incidents toward gay men or lesbians. Only one in four (26 percent) reported any such incident. As Table 17 indicates, fewer than 15 percent responded affirmatively to any of the questions about specific positive comments or actions. Lawyers were most likely to make positive comments or take positive actions, followed by judges. Some of the open-ended comments described these experiences. Many of the positive comments concerned second-parent adoptions.

An openly lesbian couple adopted an infant from foster care. The child's mother spoke positively about them. Both parties were allowed to adopt although state policy does not allow my agency to officially recommend it. Few counties are as progressive as this one.

The second parent adoption proceedings went exactly as our lawyer expected them to. The judge made our children feel special.

My lawyer in the divorce case was positive. I learned later [that my ex-husband's] lawyer was also aware of my sexual orientation. There was discussion regarding custody of the children. Both lawyers agreed my sexual orientation had no place in this discussion.

The judge was overruling a recommendation by the DSS to not approve our adoption because we were unmarried adults. He clearly stated in the court record that we were a lesbian couple, and he was warm to ourselves and our gay attorney.

In this city court, the police and prosecution staff treated me extremely well. [Respondent had been a crime victim.]

Finally, respondents were asked whether they were verbally abused or physically threatened due to their sexual orientation during their most recent contact with the courts. Eight percent reported verbal abuse, and 2 percent were physically threatened. About two-thirds of those who experienced verbal abuse indicated that the abuser was someone other than a lawyer, judge, or court employee. The remainder were equally divided between lawyers and other court employees. All physical threats were attributed to someone other than a judge, lawyer, or court employee.

Table 16
Lesbian and Gay Court Users
Percentage Who Saw or Heard *Negative* Comments or Actions Toward Gay Men or
Lesbians During Another Contact with a California Court

Type of Comment or Action	Percentage Who Saw/Heard	If Yes, by Whom?			
		Judge	Lawyer	Employee	Other ¹
Negative comments about someone else who is a lesbian or gay man	35.9	9.8	51.0	17.6	41.2
Negative remarks about gay men or lesbians arising from a case	28.6	20.0	45.0	25.0	40.0
Negative comments about you because you are a lesbian or gay man	22.5	6.3	40.6	15.6	46.9
Ridicule, snickering, or jokes about lesbians and/or gay men	25.5	11.1	33.3	36.1	52.8
Other negative remarks about gay men or lesbians	25.4	16.7	44.4	22.2	38.9
Use of derogatory terms or comments about lesbians or gay men	20.4	6.9	20.7	34.5	55.2
Negative actions toward someone else who is a gay man or lesbian	17.9	28.0	44.0	32.0	36.0
Negative actions toward you because you are a lesbian or gay man	17.0	25.0	25.0	25.0	50.0
Use of disparaging gestures toward gay men or lesbians	7.7	0	45.5	18.2	36.4

N varies from 140 to 142 depending on the item.

¹ The majority of "Other" responses refer to other court users.

Table 17
Lesbian and Gay Court Users
Percentage Who Saw or Heard *Positive* Comments or Actions Toward Gay Men or
Lesbians During Another Contact with a California Court

Type of Comment or Action	Percentage Who Saw/Heard	If Yes, by Whom?			
		Judge	Lawyer	Employee	Other ¹
Positive actions toward you because you are a lesbian or gay man	14.1	20.0	50.0	20.0	25.0
Positive comments about you because you are a lesbian or gay man	13.5	10.5	52.6	15.8	36.8
Other positive remarks about gay men or lesbians	11.3	18.8	62.5	18.6	12.5
Positive comments about someone else who is a lesbian or gay man	8.5	25.0	58.3	25.0	33.3
Positive actions toward someone else who is a gay man or lesbian	7.0	40.0	30.0	0	30.0
Positive remarks about gay men or lesbians arising from a case	6.4	33.3	55.6	22.2	11.1

N varies from 140 to 142 depending on the item.

¹ The majority of "Other" responses refer to other court users.

Respondents' Attitudes

In addition to indicating whether they witnessed or experienced certain comments or behaviors, respondents reporting on another contact with the California courts were asked to indicate their level of agreement with various statements about their most recent court experience. Table 18 indicates the percentage of respondents who agreed with the various statements. Table 19 shows the mean ratings per statement. Both ways of presenting the results indicate that most respondents felt they were treated no differently than other users of the courts and were treated with respect by those who knew their sexual orientation. For example, 41 percent “agreed strongly” and another 34 percent “agreed somewhat” with the statement, “As far as I could tell, I was treated the same as everyone else.” Almost half (44 percent) “agreed strongly” and 26 percent “agreed somewhat” with the statement, “I was treated with respect by those who knew my sexual orientation.”

Despite these findings, many respondents had less benign experiences. Thirty nine percent agreed somewhat or strongly that sexual orientation was used to devalue their credibility, 38 percent felt threatened because of their sexual orientation, and 35 percent agreed that their sexual orientation was raised as an issue even though it did not pertain to the case. One-quarter felt forced to state their sexual orientation against their will, and 29 percent agreed that someone else stated their sexual orientation without their approval. Thus, a substantial minority of those choosing to report on a contact with the California courts in which sexual orientation was pertinent had experiences that were characterized by discomfort or distress.

Perceived Fairness of California Courts to Lesbians and Gay Men

Most of the survey questions focused on respondents' direct experiences and observations. Two items, however, assessed their general attitudes about the fairness of the California courts to gay men and lesbians.

These responses must be treated with caution because the beliefs that underlie respondents' answers may be inaccurate. For example, perceived unfairness of the courts may be based on the substance of the law rather than the manner in which the courts treat individuals; similarly, responses may reflect “spillover” from other components of the justice system, such as police. Finally, individuals who lost cases in court may conclude that the system is unfair, although impartial observers may disagree with this assessment. Despite these caveats, attitudes are nonetheless important because they exercise strong influences over behavior and hence may affect the ways in which lesbians and gay men use the courts.

As shown in Table 20, respondents perceived the courts as less fair to gay men and lesbians than to people in general. Only 40 percent rated the courts

as “fair” (6 or above on a 10-point scale) to lesbians and gay men, while 68 percent rated the courts as “fair” to people in general. The mean fairness rating of 5.23 for gay men and lesbians is about equal to the fairness rating that respondents in another Judicial Council–sponsored survey assigned to the court systems’ fairness to minorities (CommSciences, date not provided).

Table 20 also provides comparisons between lesbians and gay men and between respondents with in-courtroom versus out-of-courtroom experiences. In comparison to gay respondents, lesbian respondents perceived the courts as more fair both to people in general and to gay men and lesbians. Additionally, the differential between the two ratings was larger for gay respondents than for lesbian respondents.

Respondents reporting out-of-courtroom contacts assigned lower fairness ratings than did those with in-courtroom contacts. Although the reasons for this difference cannot be ascertained from this data, it is reassuring that experience does not appear to increase the level of perceived unfairness.

Table 21 displays additional ratings of the courts. Over two-thirds (71 percent) of respondents perceived the courts as successful in providing access for lesbians and gay men, while 29 percent perceived the courts as unsuccessful in this regard. About half (55 percent) believed the courts are sufficiently available to resolve disputes involving gay men and lesbians, with 45 percent responding that the courts are not available for this purpose. Respondents were evenly divided about whether the courts are successful in providing fair and unbiased treatment for lesbians and gay men.³ As shown in Table 22, lesbian respondents were more likely than gay respondents to perceive the courts as successful in meeting these goals. In addition, those with in-courtroom contacts rated the courts as more successful than those with out-of-courtroom contacts.

To some extent, the responses to these questions are grouped. For example, 43 percent thought the courts were somewhat or very successful on *all* three dimensions, 25 percent thought the courts were somewhat or very successful on two dimensions, 16 percent thought the courts were somewhat or very successful on one dimension, and the remainder (16 percent) thought the courts were somewhat or very successful in *none* of the dimensions. Thus, individual respondents tended to rate these three items in a similar fashion.

³ In developing the questionnaire, “access” was intended to refer to individuals’ perceived level of comfort in using the courts, while “availability” was intended to refer to the manner in which the law addresses issues related to sexual orientation. However, it is likely that respondents defined the concepts of “access” and “availability” in different ways.

Table 18
Lesbian and Gay Court Users
Percentage Who Agree Somewhat or Strongly with Various Statements About
Another Contact with a California Court

Statement	Percent Agreeing Somewhat or Strongly
As far as I could tell, I was treated the same as everyone else	74.5
I was treated with respect by those who knew my sexual orientation	70.4
I was comfortable about stating my sexual orientation	59.5
I did not want to state my sexual orientation	55.6
My sexual orientation was used to devalue my credibility	39.0
My sexual orientation was pertinent to my reason for using the court	38.2
I felt threatened because of my sexual orientation	37.7
My sexual orientation was pertinent to the court proceedings	37.1
My sexual orientation was raised as an issue even though it did not pertain to the case	35.0
Someone else stated my sexual orientation without my approval	28.7
I felt forced to state my sexual orientation against my will	24.5

N varies from 94 to 137 depending on the item.

Table 19
Lesbian and Gay Court Users
Mean Agreement Ratings for Various Statements About Another Contact with a
California Court

Statement	Mean Rating¹
As far as I could tell, I was treated the same as everyone else	3.02
I was treated with respect by those who knew my sexual orientation	2.97
I was comfortable about stating my sexual orientation	2.77
I did not want to state my sexual orientation	2.58
I felt threatened because of my sexual orientation	2.10
My sexual orientation was pertinent to the court proceedings	2.09
My sexual orientation was used to devalue my credibility	2.08
My sexual orientation was pertinent to my reason for using the court	2.05
My sexual orientation was raised as an issue even though it did not pertain to the case	2.00
Someone else stated my sexual orientation without my approval	1.82
I felt forced to state my sexual orientation against my will	1.72

N varies from 94 to 137 depending on the item.

¹ Responses were based on a four-point scale, where 1 = disagree strongly and 4 = agree strongly.

Table 20
Lesbian and Gay Court Users
Attitudes About the Fairness of the California Courts:
Mean Fairness Ratings¹ for All Respondents and by Selected Subgroups

Fairness of the Courts to:	All	Gay Men²	Lesbians²	In-Courtroom Contact	Out-of-Courtroom Contact
Gay men and lesbians	5.23	4.80	5.41	5.32	5.23
People in general	6.50	6.22	6.63	6.62	6.43
Difference	1.27	1.42	1.22	1.30	1.20

N = maximum of 1,138

¹ Ratings were made on a 10-point scale, with higher scores indicating higher levels of fairness.

² Includes bisexual respondents.

Table 21
Lesbian and Gay Court Users
Attitudes About Access and Fairness of California Courts for Gay Men and Lesbians

Success of the Courts in:	Somewhat or Very Successful (%)	Somewhat or Very Unsuccessful (%)	Mean Rating¹
Providing access for lesbians and gay men	71.1	28.9	2.79
Being available to resolve disputes involving gay men and lesbians	55.1	44.9	2.50
Providing fair and unbiased treatment for lesbians and gay men	49.8	50.2	2.42

N = maximum of 1,050

¹ Mean ratings were calculated using a four-point scale, where 1 = very unsuccessful and 4 = very successful; higher numbers indicate more agreement with the statement.

Table 22
Lesbian and Gay Court Users
Attitudes About Access and Fairness of California Courts Toward Gay Men and Lesbians:
Mean Fairness Ratings¹ for All Respondents and by Selected Subgroups

Success of the Courts in:	All	Gay Men²	Lesbians²	In- Courtroom Contact	Out-of- Courtroom Contact
Providing access for lesbians and gay men	2.79	2.82	2.68	2.77	2.82
Being available to resolve disputes involving gay men and lesbians	2.50	2.56	2.35	2.47	2.56
Providing fair and unbiased treatment for lesbians and gay men	2.42	2.48	2.27	2.43	2.45

N = maximum of 1,050

¹ Mean ratings were calculated using a four-point scale, where 1 = very unsuccessful and 4 = very successful; a higher number indicates more agreement with the statement.

² Includes bisexual respondents.

Summary

The majority of respondents indicated that they were treated fairly and did not have negative experiences related to their sexual orientation. Most gay men and lesbians responding to the survey believe they were treated no differently from other users or the court.

Eighteen percent, however, did experience or observe negative incidents toward lesbians or gay men during their most recent contact with the courts. The most common such incident was ridicule, snickering, or jokes based on sexual orientation.

Only 7 percent of respondents were asked if they had a domestic partner, while over a quarter were asked about their marital status. This finding suggests that the manner in which lawyers and judges question individuals in court proceedings does not consistently consider the choices available to lesbians and gay men.

Respondents perceived the court system as less accessible and fair to gay men and lesbians than to people in general. Fully half believe that the courts are unsuccessful in providing fair and unbiased treatment to lesbians and gay men. Such perceptions may affect the willingness of lesbians and gay men to use the courts.

COURT EMPLOYEE SURVEY RESULTS

Characteristics of the Sample

This overview of findings from the employee survey is based on a sample of 1,525 respondents. Tables 23 through 28 describe the sample. A majority of respondents are female (85 percent) and white (67 percent). Unlike the respondents to the user survey, over two-thirds of these respondents earned less than \$50,000 per year, and only about one-third had completed college.

The majority (93 percent) of respondents was heterosexual, most of whom were married. Only 5 percent indicated that they were lesbians, gay men, or bisexual (with 2 percent responding “Other” for sexual orientation). Of the 64 lesbian, gay, and bisexual self-identified employees in our sample, 22 were lesbian, 31 were gay men, 10 were bisexual women, and 1 was a bisexual man. These individuals were considerably less likely to be “out” at work than the respondents in our sample of gay courts users (see Table 24 for employees; compare Table 2 for court users). Overall, about one-third of lesbian and gay employees were “out” at work, compared to over half of the court users.

Almost all (98 percent) respondents were full-time, permanent court employees (see Table 25). An average respondent had worked for 7 years in her current position and for 12 years in the California court system. As shown in Table 26, respondents represent a range of court employees, although almost half (45 percent) are clerks. The next largest group is clerical staff and mediators, followed by court administrators.⁴ The sample of respondents work in many different kinds of courts; about a quarter are based in criminal courts, and 12 percent are based in civil courts (see Table 27). Fully one-quarter work in more than one type of court.⁵ Slightly over half (53 percent) of the respondents work in urban courts. Almost half (47 percent) of the sample observed or participated in court proceedings on a daily basis. Two-thirds did so at least once a month (see Table 28).

⁴ A large number of employees originally described their job as “other” based on their formal job title. Where possible, we recorded these responses in one of our survey categories, and we also created additional categories (e.g., commissioner, judge).

⁵ Care should be taken when interpreting these responses. The survey did not give employees the option of “more than one type of court,” and consequently many employees filled in this item by listing their multiple-court assignments. We cannot be sure that all such employees did this, however.

Table 23
Court Employees
Respondent Characteristics

Respondent Characteristics	Percentage
Female	84.9
<i>Race/Ethnicity</i>	
American Indian/Native American	3.1
Asian, Asian American, Pacific Islander	6.3
Black, African American	5.2
Chicano/a, Latino/a, Hispanic	13.3
White (non-Hispanic)	67.0
Other	3.5
<i>Sexual Orientation</i>	
Lesbian	1.5
Gay man	2.2
Bisexual	0.8
Heterosexual	93.4
Other	2.1
<i>Domestic Situation</i>	
Legally married and living with spouse	59.0
Living with partner of opposite sex but not legally married	6.0
Living with same-sex partner	2.4
Single, not living with spouse or partner	28.0
Other	4.6
<i>Highest Educational Level</i>	
High school graduate or less	9.9
Some college	38.7
Two-year associate's degree	16.8
Four-year bachelor's degree	16.0
Graduate or professional school	18.6
<i>Individual Annual Income</i>	
Under \$30,000	30.0
\$30,000–50,000	40.5
\$50,000–70,000	14.7
Over \$70,000	14.8

N = 1,525

Table 24
Court Employees
Degree to Which Lesbian, Gay, and Bisexual Respondents Are Open About Their Sexual Orientation

Aspect of Life	Percentage Totally Out	Percentage Selectively Out	Percentage Not Out
At work	36.1	37.7	26.2
To your family	60.7	27.8	11.5
To your friends	69.4	29.0	1.6
In your community	41.7	35.0	23.3
In recreational activities	36.8	50.9	12.3
In all aspects of your life	22.0	66.1	11.9

N = 64 (Due to nonresponse, N does not include all L/G/B respondents.)

Table 25
Court Employees
Mean Years of Experience and Job Status

Employment Experience and Status	Percentage
<i>Mean Years Experience</i>	
In California courts	12.0
In current job	7.4
<i>Job Status</i>	
Full-time, in a permanent job	97.8
Part-time, in a permanent job	1.4
Full-time, in a temporary job	0.7
Part-time, in a temporary job	0.2
Other	0.2

N varies from 1,525 to 1,536 depending on the item.

Table 26
Court Employees
Type of Job

Type of Job	Percentage
Court clerk	45.3
Clerical staff/mediator/staff attorney	19.0
Court administrator	17.2
Commissioner	3.4
Bailiff	1.3
Court reporter	1.0
Referee	0.8
Research Attorney	0.7
Judge	0.5
Multiple response	1.2
Other ¹	9.6

N = 1,512

¹ The majority of “Other” responses include general descriptions that cannot easily fit into the categories used, such as manager or administrator. Other responses include “bench officer,” “judicial officer,” “financial advisor,” “accountant,” and “secretary.”

Table 27
Court Employees
Type of Court and Court Location

Type and Location of Court	Percentage
<i>Type</i>	
Criminal	24.9
Civil	12.2
Traffic	9.8
Family law	5.8
Municipal/superior	3.5
Small claims	2.0
Probate	1.0
More than one type	26.6
Administration (no court type)	8.7
Other	5.5
<i>Location</i>	
Urban area	52.7
Suburban area	29.0
Rural area	18.3

N = 1,457

Table 28
Court Employees
Frequency of Observation or Participation in Court Proceedings as Part of Job

Frequency of Participation in Court Proceedings	Percentage
Daily	47.4
More than once a week but not daily	9.6
Once a week	3.4
More than once a month but less than once a week	6.5
Once a month	3.1
More than once a year but less than once a month	14.8
Rarely	3.5
Never	9.6
Other	1.8

N = 1,498

Observations of People (Other Than Themselves) in Court and Courthouse

Observations in Open Court

The survey asked respondents to indicate how frequently they had observed various behaviors in open court during the past year. A total of about 300 employees (19 percent) reported *at least one* negative action or comment related to lesbians or gay men observed in open court. These incidents occurred fairly infrequently, generally no more than three times during the year. As shown in Table 29, the most commonly reported negative behaviors occurring in open court were “ridicule, snickering, or jokes” and “negative comments” about lesbians or gay men. Overall, as many employees reported positive actions or comments toward gay men and lesbians as negative ones (see Table 30).

The tables show responses for *all* employees. Examining the responses separately according to respondents’ sexual orientation (not shown in table) suggests that gay, lesbian, and bisexual employees are more likely to report negative incidents than heterosexual employees. For example, 84.2 percent of straight employees have never observed ridicule, snickering, or jokes in open court (in the past year), compared to 60.0 percent of gay, lesbian, and bisexual employees; 5.0 percent of gay, lesbian, or bisexual employees observed such occurrences six or more times versus 3.6 percent of heterosexual employees. A similar pattern exists for other items. Three-quarters (75.4 percent) of gay, lesbian, or bisexual employees versus 89.2 percent of heterosexual employees had never observed the use of derogatory terms or comments about gays or lesbians; 4.9 percent of gay, lesbian, or bisexual versus 2.6 percent of heterosexual employees had observed such incidents six or more times in open court in the past year. Almost no straight employees (4.7 percent) reported ever seeing sexual orientation used to devalue the credibility of a participant in a case versus 12.9 percent of gay, lesbian, or bisexual employees.

Respondents’ open-ended comments provide some additional information about their observations. Most of those who provided comments noted that their workplace was fair. For example:

In sixteen years, I have observed that sexual orientation is rarely mentioned at all—and if it is, it is completely neutral in tone and acceptance.

Everyone conducts themselves in a professional manner.

I do not believe comments would be made in or near my work area. I am a supervisor and personnel in our workplace are aware that such comments are inappropriate and would not be tolerated. Also, [the] makeup of personnel is of liberal views.

Smaller numbers of respondents described negative incidents. In some cases, these incidents reflected one-time or unusual events, such as the following:

We have a cross-dressing transsexual that received comment at all his court appearances.

Sexual orientation was used in a custody fight.

In other cases, the negative incidents were recurring and part of a pattern. Some examples follow.

There are quite a few gay men who worked at our court and were openly harassed because of it.

I often hear jokes disparaging or lampooning heterosexual conduct... But "gay" comments are typically mean spirited and intended to demean.

I've been faced with discrimination and derision [because I am a gay man] over a period of years, some of it directly and most of it indirectly.

Almost half (48 percent) of those reporting a negative action or comment took no action, but 12 percent confronted the perpetrator, and 9 percent discussed the incident with a co-worker (Table 31). Those who took action were asked to indicate the outcome of their intervention. About equal numbers reported that nothing happened or that the negative actions/comments decreased. Fewer than 2 percent were branded as troublemakers or experienced retribution as a result of their intervention (Table 32).

Those who took no action were asked why they did not intervene. As shown in Table 33, over half (55 percent) responded that the incident was not serious enough to warrant intervention, while 25 percent thought nothing constructive would come from intervention. Another 16 percent did not even think of intervening. Others did not know how to intervene (13 percent). Another 17 percent feared negative consequences, such as a reduced chance of promotion (6 percent) or being labeled a troublemaker (11 percent). The open-ended responses to this question suggest another important reason why some took no action: some respondents did not believe any intervention was needed and, indeed, defended the right of individuals to make negative comments. For example, one respondent wrote, "I believe the declarant has an absolute right to say what he wants, even if it is 'politically incorrect.'"

Observations in Other Work Settings

The survey then asked respondents to indicate how frequently they had observed various behaviors in work *settings other than open court* in the past year. The results indicate a higher frequency of negative comments or actions

in these more private settings compared to open court. While 19 percent of respondents had observed negative incidents toward gay men or lesbians in open court during the past year, more than one in three (35 percent) reported one or more such experiences in other work settings.

For example, 32 percent of the respondents reported observing ridicule, snickering, or jokes about lesbians or gay men; 28 percent heard others make negative comments about gay men or lesbians (12 percent reported more than four such incidents); and 21 percent reported the use of “derogatory terms” to describe gay men or lesbians. Far fewer (7 percent), however, reported negative actions. Table 34 presents these findings.

The results shown in the table are for all employees. The responses of gay, lesbian, or bisexual employees (not shown) indicate that they are far more likely to report negative incidents outside of open court. For example, 9.5 percent of gay, lesbian, or bisexual employees reported hearing negative comments about gays and lesbians six or more times over the past year versus 6.1 percent of heterosexual employees. Differences in responses are quite large on some of the commonly reported items. For example, 9.4 percent of heterosexual employees report ridicule, snickering, or jokes about gays or lesbians six or more times in work settings other than open court in the past year versus 19.0 percent of the gay, lesbian, or bisexual employees; 2.3 percent of heterosexual employees reported seeing the use of disparaging gestures toward lesbians or gay men six or more times during the past year versus 9.7 percent of gay, lesbian, or bisexual employees.

Respondents’ open-ended comments provide some additional information about their observations in setting other than open court. For example:

All [negative] comments were short one-liners.

A co-worker said that she thought being gay was “gross.”

When helping lesbians or gays some of the clerks handle their paperwork touching only the tips or edges of the paper. One stated, “You never know what they did or touched.”

I’ve heard derisive references such as “faggot” from judges, co-workers, and bailiffs. Questions have been asked of me re. flowers/gardening and other areas where gay men are stereotyped.

An employee forwarded an e-mail joke that was found offensive by at least one gay person, and I didn’t care for it at all.

One [co-worker] made a very pointed comment expressing doubt about GLBTs as capable parents.

I’ve never observed negative actions, but comments abound.

Respondents were about equally likely to have observed positive comments or actions toward lesbians or gay men in open court and in other work settings. (see Table 35). Compared to heterosexual employees, gay, lesbian, and bisexual employees were more likely to report observing positive comments about or positive actions toward gay men or lesbians. For example, a lesbian respondent wrote, “I work with many people who are openly gay or lesbian, and the heterosexual employees are generally accepting and friendly.”

The most common open-ended comments in response to these survey questions indicated that respondents perceived no differences in the treatment of heterosexual and nonheterosexual employees. For example:

It's a neutral environment.

We are too busy to enter into conversations other than those related to court issues.

My supervisor is a gay male and not once did I hear either a positive or negative reference to his sexual orientation.

This is a 1998 liberal office. I have not heard comments of this nature. The office is composed of mostly intelligent people who are sensitive to this issue.

Two-thirds (65 percent) of those who observed a negative incident toward lesbians or gay men in settings other than open court took no action in response (see Table 36). Fourteen percent confronted the person, and 11 percent discussed the incident with a co-worker. Open-ended comments illustrate the kinds of interventions that respondents implemented. Some examples follow.

I expressed my displeasure and walked out of the room.

The occurrences were always in the context of “jokes,” and I directly said to the person that I don't want to hear any jokes involving any kind of prejudice.

I told the person I didn't want to hear talk like that again.

Slightly over half of those who took some action (54 percent) reported that the negative acts diminished or stopped, while 35 percent reported no effect of their intervention (see Table 37). Some open-ended comments provide further insight:

The negative comments stopped while I was in the room.

The confrontation was taken seriously and although there was no “punishment,” my displeasure was genuinely considered.

I was labeled prissy/prude.

Of those who took no action, most (62 percent) felt the incident wasn't serious enough to intervene, and 23 percent felt nothing constructive would come of intervening. About one in ten feared negative consequences, such as being branded a troublemaker (8 percent) or damaging promotion prospects (3 percent). Table 38 presents these findings. As the sample open-ended comments that follow indicate, some did not intervene because they shared the sentiments underlying the negative incidents or defended the right of others to express their attitudes.

I agreed with the jokes or comments.

The negative comments were completely valid.

I didn't care.

The jokes did not bother me.

I have my own ideas, others have theirs. It is not my place to judge anyone.

It was just general conversation. It was not serious.

You can't change the way people were brought up to think and have thought their whole lives.

I figure everyone is entitled to their own opinion regarding people even if it's not my opinion, and I just tend to think a little less of the person.

Finally, it is worth summarizing the information from respondents across settings—that is, both in and out of court. Overall, 58.0 percent of heterosexual employees reported no negative incidents either in or out of court, compared to a much smaller number of gay men (45.2 percent) and lesbians (36.4 percent). Just 13.2 percent of heterosexual employees reported negative incidents both in *and* out of court, compared to 31.8 percent of lesbian employees and 25.8 percent of gay male employees.

Table 29
Court Employees
Percentage Observing *Negative* Actions/Comments by Judges, Lawyers, or Court
Employees in Open Court Within the Past Year

Action or Comment	Frequency			
	Never	1–3 times	4–6 times	More than 6 times
Ridicule, snickering, or jokes about gay men or lesbians	84.0	8.7	3.7	3.6
Negative comments about gay men or lesbians	86.4	9.5	2.3	1.9
Use of derogatory terms or comments about gay men or lesbians	88.8	6.5	2.1	2.6
Negative comments about heterosexuals	89.8	5.4	1.6	3.1
Negative actions toward heterosexuals	93.7	3.3	1.4	1.6
Use of disparaging gestures toward lesbians or gay men	94.6	3.1	1.2	1.1
Negative actions toward gay men or lesbians	94.8	3.9	0.8	0.6
Sexual orientation used to devalue the credibility of a participant in a case	95.2	3.4	0.8	0.7

N varies from 1,436 to 1,459 depending on the item.

Table 30
Court Employees
Percentage Observing *Positive* Actions/Comments by Judges, Lawyers, or Court
Employees in Open Court Within the Past Year

Action or Comment	Frequency			
	Never	1–3 times	4–6 times	More than 6 times
Positive actions toward heterosexuals	85.2	4.4	2.9	7.5
Positive comments about heterosexuals	85.3	5.1	3.2	6.4
Positive actions toward lesbians or gay men	89.3	5.0	1.5	4.1
Positive comments about lesbians or gay men	89.6	5.9	2.1	2.4

N varies from 1,436 to 1,459 depending on the item.

Table 31
Court Employees
Response of Those Who Observed Any Negative Actions or Comments Toward
Lesbians or Gay Men in Open Court Within the Past Year

Response	Percentage¹
Took no action	48.3
Confronted the person who made the comment or took the action	12.2
Discussed the incident with a colleague or co-worker	8.8
Talked with someone else	1.7
Reported the incident(s) to a superior	1.4
Consulted a legal or an employment advisor	0.3
Took some other action ²	4.4

N = 294

¹ The numbers do not equal 100 percent because we have included individuals who were eligible to respond to this item but did not.

² “Other actions” include directing the practice to stop, commenting in court on the impropriety of the incident, or discussing the incident with the person to whom negative comments were directed.

Table 32
Court Employees
Reported Effect of Action Taken in Response to Negative Actions or Comments
Toward Lesbians or Gay Men in Open Court Within the Past Year

Outcome	Percentage¹
The negative comments or actions stopped or decreased in frequency or severity	40.3
No effect/nothing happened	37.5
The person/people who made the negative comments or actions were reprimanded or punished	6.9
You were branded as a troublemaker or some action was taken against you	1.4
The negative comments or actions increased in frequency or severity	0
Some action was taken against someone else	0
Other	11.1

N = 72 (Due to the small N, caution is called for in interpreting these findings.)

¹ Percentages do not sum to 100 because the table includes individuals who were eligible to respond but did not.

Table 33
Court Employees
Reason Reported for Taking No Action in Response to Negative Actions or
Comments Observed in Open Court Within the Past Year

Reason	Percentage¹
You did not think the incident(s) were serious enough to intervene	55.6
You did not believe anything constructive would come of intervening	24.6
It never occurred to you to intervene	16.2
You were unsure about what to do or how to intervene	13.4
You did not want to be branded as a “troublemaker,” or you feared that some action would be taken against you	10.6
People at a higher level failed to intervene	7.7
You thought intervening would reduce your chances of promotion	5.6
Someone else intervened	2.8
You believed it was someone else’s responsibility to intervene	2.8
You believed you would be thought to be gay or lesbian	2.8
You feared that some action would be taken against someone else	2.8
Other	8.5

N = 142

¹ Column sums to over 100 percent because some respondents checked multiple reasons.

Table 34
Court Employees
Percentage Observing Negative Actions or Comments by Judges, Lawyers, or Court
Employees in Work Settings Other Than Open Court Within the Past Year

Action or Comment	Frequency			
	Never	1–3 times	4–6 times	More than 6 times
Ridicule, snickering, or jokes about gay men or lesbians	67.6	17.5	5.6	9.3
Negative comments about gay men or lesbians	71.7	16.4	6.1	5.9
Use of derogatory terms or comments about gay men or lesbians	78.6	11.5	3.3	6.6
Negative comments about heterosexuals	82.5	7.6	3.9	5.9
Use of disparaging gestures toward lesbians or gay men	91.4	4.7	1.4	2.5
Negative actions toward heterosexuals	92.2	3.1	1.5	3.1
Negative actions toward gay men or lesbians	92.7	4.4	1.3	1.5
Sexual orientation used to devalue the credibility of a participant in a case	93.7	3.7	0.9	1.6

N varies from 1,402 to 1,443 depending on the item.

Table 35
Court Employees
Percentage Observing Positive Actions or Comments by Judges, Lawyers, or Court
Employees in Work Settings Other Than Open Court Within the Past Year

Action or Comment	Frequency			
	Never	1–3 times	4–6 times	More than 6 times
Positive comments about heterosexuals	79.6	6.3	3.7	10.3
Positive comments about lesbians or gay men	82.6	10.2	3.0	4.2
Positive actions toward heterosexuals	83.5	4.4	2.6	9.5
Positive actions toward lesbians or gay men	88.0	5.9	1.7	4.4

N varies from 1,402 to 1,443 depending on the item.

Table 36
Court Employees
Response of Those Who Observed Negative Actions or Comments Toward Lesbians
or Gay Men in Work Settings Other Than Open Court Within the Past Year

Response	Percentage
Took no action	64.8
Confronted the person who made the comment or took the action	13.6
Discussed the incident with a colleague or co-worker	11.4
Reported the incident(s) to a superior	3.5
Talked with someone else	1.7
Consulted a legal or an employment advisor	0.2
Took some other action	3.9

N = 537

Table 37
Court Employees
Reported Effects of Action Taken in Response to Negative Actions or Comments
Toward Lesbians or Gay Men in Work Settings Other Than Open Court Within the
Past Year

Effects	Percentage¹
The negative comments or actions stopped or decreased in frequency or severity	53.5
No effect/nothing happened	35.4
The person/people who made the negative comments or actions were reprimanded or punished	4.2
You were branded as a “troublemaker,” or some action was taken against you	1.4
The negative comments or actions increased in frequency or severity	0
Some action was taken against someone else	0
Other	13.9

N = 144

¹ Column sums to over 100 percent because some respondents checked multiple effects.

Table 38
Court Employees
Reason Reported for Taking No Action in Response to Negative Actions or Comments
Observed in Work Settings Other Than Open Court Within the Past Year

Reason	Percentage¹
You did not think the incident(s) were serious enough to intervene	61.5
You did not believe anything constructive would come of intervening	22.7
It never occurred to you to intervene	14.9
You were unsure about what to do or how to intervene	8.3
You did not want to be branded as a “troublemaker,” or you feared that some action would be taken against you	7.8
People at a higher level failed to intervene	7.8
You thought intervening would reduce your chances of promotion	2.6
You believed you would be thought to be gay or lesbian	2.3
Someone else intervened	1.7
You believed it was someone else’s responsibility to intervene	1.4
You feared that some action would be taken against someone else	1.1
Other	10.3

N = 348

¹ Column sums to over 100 percent because some respondents checked multiple reasons.

Personal Experiences at Work

After asking respondents to report on their observations, the survey asked respondents about their personal work experiences. Specifically, *all* employees (straight and gay) were asked whether they had experienced negative comments or actions based on their sexual orientation. They also were asked whether they had experienced discrimination based on their sexual orientation.⁶ In this section, we examine the responses of all respondents and also examine those of the lesbian, gay, and bisexual respondents. Overall, 6.6 percent of respondents reported *at least one* negative incident.

As shown in Table 39, less than 5 percent of all respondents reported any negative comments or actions directed toward them based on their sexual orientation. Very few also reported positive comments or actions.

However, gay and lesbian employees were far less likely to report having never experienced negative actions or comments based on sexual orientation than were their heterosexual co-workers. For example, as Table 40 shows, while under 5 percent of heterosexual employees had experienced negative comments, jokes, ridicule, negative acts, and so on, the corresponding figures for lesbians and gay men are in the 15 to 20 percent range.

Overall, 32 percent of lesbian and 27 percent of gay male employees reported *at least one* negative personal experience at work based on sexual orientation. Open-ended comments provide examples of some of these experiences:

I could never understand why all of a sudden I was being treated with disrespect by management. Then a co-worker told me she thought management hated gays and that they were told by a different co-worker that I was gay.

My boss was heard to question the closeness of my relationship to another employee of the same sex. He said, "What's up with that?"

I'm not open at work. Some people will make a comment or two.

Managers, administrators and staff discussed my sexual orientation.

Of the 100 respondents experiencing some negative comments or actions (other than discrimination) in the workplace based on their perceived or actual sexual orientation, almost half (42 percent) took no action (see Table 41). One-quarter (25 percent) confronted the person responsible for the negative comment or action, and 21 percent discussed the incident with a co-worker. Sixteen percent reported the incident to a superior, and 10 percent talked with someone else.

⁶ Note that, in this context, "discrimination" is subjective, based on the respondents' perceptions or beliefs.

Nearly half (49 percent) of those who took some action in response to the negative experience reported no effect, while about one-third (35 percent) reported that the negative comments or actions stopped or decreased in frequency or severity. Only 2 percent indicated that the person responsible for the negative comments or actions was reprimanded, while 4 percent felt that they were branded a troublemaker or that some action was taken against them. Table 42 displays these results. More than one in five reported some other results, such as the following:

It's like I don't exist any more.

Made me feel uncomfortable. Fewer invitations to group lunches, etc.

People turned to commenting behind my back.

Of those who took no action, most (60 percent) did not view the incident as serious enough to warrant intervention (see Table 43). About one-third (36 percent) did not believe anything constructive would come of intervening, and about the same percentage (35 percent) feared negative consequences: either being branded as a troublemaker or reducing their chances of promotion. Seventeen percent did not know how to intervene, and 7 percent indicated that it never occurred to them to intervene.

Only 38 respondents (about 3 percent of the sample) reported experiencing discrimination at work within the past year based on their sexual orientation. However, as shown in Table 44, 16 percent of lesbian, gay, or bisexual employees reported being discriminated against at work. This average conceals the fact that no bisexual employees reported discrimination, but 18 percent of lesbians and 21 percent of gay men did—in other words, almost one in five gay and lesbian court employees reported being discriminated against at work because of their sexual orientation.

As shown in Table 45, one-third of these employees took no action, while 30 percent discussed the incident with a colleague, 16 percent confronted the person responsible for the discrimination, and 14 percent reported the incident to a superior.

Of those who took some action, 56 percent reported that nothing happened, while only 17 percent reported that the discrimination stopped or decreased in frequency or severity. Almost as many (11 percent), however, reported that they were branded as a troublemaker, or some action was taken against them. Of those who did not intervene, 46 percent thought nothing constructive would come of taking action, and 23 percent feared negative consequences. Tables 46 and 47 display these findings. Over one-third of those who took no action in response to discrimination cited reasons other than the options listed on the questionnaire. Examples include:

Being prejudiced was their problem, not mine.

Employee would not understand and would not change.

When discrimination is subtle, how do you prove it? You can't; people will just assume you are making an issue out of nothing.

Table 39
Court Employees
Percentage Reporting Personal Incidents (Negative and Positive) at Work Within
the Past Year, All Respondents

Action or Comment	Frequency			
	Never	1–3 times	4–6 times	More than 6 times
Heard positive comments about own sexual orientation	93.7	3.3	1.2	1.8
Experienced positive actions based on own sexual orientation	95.4	2.1	1.2	1.2
Physically threatened based on own sexual orientation	95.5	0.3	0.1	0.1
Heard negative comments based on own sexual orientation	95.9	2.7	0.7	0.8
Subject of jokes, ridicule, or snickering based on own sexual orientation	96.4	2.4	0.5	0.6
Experienced negative actions based on own sexual orientation	97.1	2.1	0.2	0.6
Received verbal abuse because of own sexual orientation	97.7	1.5	0.3	0.5
Called derogatory terms or names based on own sexual orientation	97.7	1.4	0.5	0.5
Sexual orientation used to devalue own credibility	98.0	1.4	0.3	0.3

N varies from 1,493 to 1,501 depending on the item.

Table 40
Court Employees
Percentage Reporting Having Experienced Negative Actions or Comments Based on
Sexual Orientation at Work Within the Past Year, by Respondents' Sexual
Orientation

Action or Comment	Hetero- sexual	Lesbian/Gay Man/Bisexual
Physically threatened based on own sexual orientation	0.5	0
Heard negative comments based on own sexual orientation	3.4	20.4
Subject of jokes, ridicule, or snickering based on own sexual orientation	3.2	16.7
Experienced negative actions based on own sexual orientation	2.5	15.7
Received verbal abuse because of own sexual orientation	2.0	12.5
Called derogatory terms or names based on own sexual orientation	1.7	15.9
Sexual orientation used to devalue own credibility	1.9	6.7

N =1,337 for heterosexual and 64 for lesbian/gay man/bisexual respondents.

Table 41
Court Employees
Actions Taken by Those Who Experienced Incidents Based on Sexual Orientation
Within the Past Year

Action	Percentage¹
Took no action	42.0
Confronted the person who made the comment or took the action	25.0
Discussed the incident with a colleague or co-worker	21.0
Reported the incident(s) to a superior	16.0
Talked with someone else	10.0
Consulted a legal or an employment advisor	5.0
Took some other action	7.0

N = 100

¹ Column sums to over 100 percent because some respondents checked multiple responses.

Table 42
Court Employees
Reported Effects of Action Taken in Response to Incidents at Work Based on Sexual
Orientation Within the Past Year

Outcome	Percentage¹
No effect/nothing happened	49.1
The negative comments or actions stopped or decreased in frequency or severity	34.5
You were branded as a “troublemaker,” or some action was taken against you	3.6
The person/people who made the negative comments or actions were reprimanded or punished	1.8
The negative comments or actions increased in frequency or severity	0
Some action was taken against someone else	0
Other	21.8

N = 55 (Due to the small N, caution is called for in interpreting these findings.)

¹ Column sums to over 100 percent because some respondents checked multiple effects.

Table 43
Court Employees
Reason for Taking No Action Reported by Those Who Experienced Incidents at
Work Based on Sexual Orientation Within Past Year

Reason	Percentage¹
You did not think the incident(s) were serious enough to intervene	59.5
You did not believe anything constructive would come of intervening	35.7
You did not want to be branded as a “troublemaker,” or you feared that some action would be taken against you	23.8
You were unsure about what to do or how to intervene	16.7
You thought intervening would reduce your chances of promotion	11.9
People at a higher level failed to intervene	7.1
You believed you would be thought to be gay or lesbian	7.1
It never occurred to you to intervene	7.1
You feared that some action would be taken against someone else	2.4
Someone else intervened	0
You believed it was someone else’s responsibility to intervene	0
Other	9.5

N = 42 (Due to the small N, caution is called for in interpreting these findings.)

¹ Column sums to over 100 percent because some respondents checked multiple reasons.

Table 44
Court Employees
Percentage Reporting Being Discriminated Against at Work
Because of Sexual Orientation

	Heterosexual	Lesbian/Gay Men/Bisexual
Percentage discriminated against	1.9	15.9

N =1,311 for heterosexual and 63 lesbian/gay man/bisexual respondents.

Table 45
Court Employees
Actions Taken by Those Reporting Being Discriminated Against at Work Based on
Sexual Orientation Within the Past Year

Action	Percentage ¹
Took no action	35.1
Discussed the incident with a colleague or co-worker	29.7
Confronted the person who made the comment or took the action	16.2
Reported the incident(s) to a superior	13.5
Looking for another job	8.1
Talked with someone else	8.1
Consulted a legal or an employment advisor	5.4
Took some other action	5.4

N = 37 (Due to the small N, caution is called for in interpreting these findings.)

¹ Column sums to over 100 percent because some respondents checked multiple responses.

Table 46
Court Employees
Reported Effect of Actions Taken in Response to Being Discriminated Against at
Work Based on Sexual Orientation Within the Past Year

Outcome	Percentage¹
No effect/nothing happened	55.6
The discrimination stopped or decreased in frequency or severity	16.7
You were branded as a “troublemaker,” or some action was taken against you	11.1
The discriminator(s) were reprimanded	5.6
The discrimination increased in frequency or severity	0
The discriminator(s) were punished	0
Other	22.2

N = 18 (Due to the small N, caution is called for in interpreting these findings.)

¹ Column sums to over 100 percent because some respondents checked multiple reasons.

Table 47
Court Employees
Reasons for Taking No Action by Those Reporting Being Discriminated Against at
Work Based on Sexual Orientation Within Past Year

Reason	Percentage¹
You did not believe anything constructive would come of intervening	46.2
You did not want to be branded as a “troublemaker,” or you feared that some action would be taken against you	23.1
You thought intervening would reduce your chances of promotion	15.4
You did not think the incident(s) were serious enough to intervene	7.7
People at a higher level failed to intervene	7.7
Someone else intervened	0
You believed it was someone else’s responsibility to intervene	0
You believed you would be thought to be gay or lesbian	0
You were unsure about what to do or how to intervene	0
You feared that some action would be taken against someone else	0
It never occurred to you to intervene	0
Other	38.5

N = 13 (Due to the small N, caution is called for in interpreting these findings.)

¹ Column sums to over 100 percent because some respondents checked multiple reasons.

Opinions About the Fairness of the Courts as Workplaces

The final section of the questionnaire asked respondents about their perceptions of the California courts as a workplace. Table 48 presents the percentage of respondents in agreement with various statements as well as the mean ratings on a five-point response scale. Table 49 shows the responses broken down by sexual orientation of the employee.

Most respondents believe that the personnel policies of their workplace are fair to lesbians and gay men and that gay men and lesbians are treated the same as other employees. However, other findings are less positive. More than one-quarter (29 percent) believe that it is unsafe for lesbians and gay men to be open about their sexual orientation, and 58 percent would prefer lesbian and gay employees to keep their sexual orientation to themselves at work. Forty percent agreed that people made jokes or comments about gay men or lesbians behind their backs. Seventeen percent agreed that it is harder to get hired if you are suspected of being lesbian or gay, 13 percent agreed that sexual orientation is used to devalue the credibility of some gay or lesbian employees, and 10 percent agreed that prejudice against gay men and lesbians is widespread at work.

Table 49 breaks down mean responses to these items by sexual orientation of the court employee. The table indicates that gay and lesbian employees are more likely than heterosexual employees to agree with the “negative” statements—for example, that it is harder to get hired if you are suspected of being gay, prejudice against lesbians and gay men is widespread at work, sexual orientation is used to devalue the credibility of some gay and lesbian employees—and less likely to agree with the neutral or positive statements such as “gay men and lesbians are treated the same as other any other employee” and “the personnel policies are fair to lesbians and gay men.” Although not shown in the table, lesbian employees disagree more with their heterosexual co-workers than do gay men. The biggest differences are seen on items regarding promotion and personnel policies.

Finally, respondents were asked to rate the perceived fairness of California courts toward gay men and lesbians and toward people in general. As shown in Table 50, lesbian and gay respondents rated the courts as less fair to both groups than did heterosexual respondents. In addition, the differential between ratings of fairness to gay and lesbians and fairness to people in general is greater for gay and lesbian than for heterosexual respondents. Again, lesbian respondents assigned lower fairness ratings than did gay men. A comparison of employee and user results indicates that lesbian employees rated the courts as less fair than did lesbian users; the opposite pattern emerged for gay men.

Table 51 indicates that most respondents perceive the courts as successful in providing access, being available to resolve disputes, and providing fair and

unbiased treatment of lesbians and gay men. Again, heterosexual respondents are significantly more likely to agree that the courts are fairer toward gay and lesbians than are gay and lesbian employees. Again, lesbians provide more negative ratings than do gay men (Table 52).

Table 48
Court Employees
Opinions Regarding Sexual Orientation Issues in Own Workplace, All Employees

Statement	Percentage Who Strongly or Somewhat Agree	Mean Rating¹
The personnel policies are fair to lesbians and gay men	94.0	3.66
Gay men and lesbians are treated the same as any other employee	88.2	3.54
Openly gay and lesbian employees have the same chance of promotion as heterosexual employees	87.3	3.51
Your co-workers are sensitive to diversity issues	80.7	3.09
It is safe for lesbians and gay men to be open about their sexual orientation at work	70.5	2.98
When people talk about diversity at work, they include sexual orientation	58.5	2.65
It is better if lesbian and gay employees keep their sexual orientation to themselves while at work	57.9	2.58
People make jokes or comments about gay and lesbian employees behind their backs	40.4	2.11
It is harder to get hired if you are suspected of being lesbian or gay	17.3	1.55
Sexual orientation is used to devalue the credibility of some gay and lesbian employees	13.4	1.45
Prejudice against lesbians and gay men is widespread at work	9.8	1.38
Lesbian and gay employees receive less favorable work assignments than heterosexual employees	4.8	1.24

N varies from 943 to 1,227 depending on the item.

¹ Mean ratings are based on a four-point scale, where 1 = disagree strongly and 4 = agree strongly.

Table 49
Court Employees
Opinions Regarding Sexual Orientation Issues in Own Workplace,
by Sexual Orientation¹

Statement	Heterosexual	Lesbian/Gay Man/Bisexual
Gay men and lesbians are treated the same as any other employee	3.57	3.21
Your co-workers are sensitive to diversity issues	3.11	2.81
The personnel policies are fair to lesbians and gay men	3.70	3.22
Openly gay and lesbian employees have the same chance of promotion as heterosexual employees	3.55	2.99
It is safe for lesbians and gay men to be open about their sexual orientation at work	2.99	2.74
When people talk about diversity at work, they include sexual orientation	2.67	2.45
It is better if lesbian and gay employees keep their sexual orientation to themselves while at work	2.59	2.48
It is harder to get hired if you are suspected of being lesbian or gay	1.53	1.92
Sexual orientation is used to devalue the credibility of some gay and lesbian employees	1.42	1.87
Prejudice against lesbians and gay men is widespread at work	1.37	1.63
Lesbian and gay employees receive less favorable work assignments than heterosexual employees	1.22	1.48
People make jokes or comments about gay and lesbian employees behind their backs	2.09	2.54

N is a maximum of 1,362 for heterosexual and 65 for lesbian/gay man/bisexual respondents depending on the item.

¹ Mean ratings are based on a four-point scale, where 1 = disagree strongly and 4 = agree strongly.

Table 50
Court Employees
Respondents' Attitudes About the Fairness of the California Courts:
Mean Fairness Rating¹ for All Respondents and by Sexual Orientation

Fairness of the Courts to:	Heterosexual	Lesbian/Gay Man/Bisexual
Gay men and lesbians	7.88	6.44
People in general	7.98	7.15
Difference	0.10	0.71

N = 1,362 for heterosexual and 65 for lesbian/gay man/bisexual respondents.

¹ Ratings were made on a 10-point scale, with higher scores indicating higher levels of fairness.

Table 51
Court Employees
Respondents' Attitudes About Access and Fairness of California Courts Toward
Gay Men and Lesbians, All Respondents

Success of the Courts in:	Percentage		Mean Rating
	Somewhat or Very Successful	Somewhat or Very Unsuccessful	
Providing access for lesbians and gay men	86.4	13.6	3.29
Being available to resolve disputes involving gay men and lesbians	81.7	18.3	3.15
Providing fair and unbiased treatment for lesbians and gay men	88.4	11.6	3.29

N varies from 1,101 to 1,168 depending on the item.

¹ Ratings were provided on four-point scales, where 1 = very unsuccessful and 4 = very successful.

Table 52
Court Employees
Respondents' Attitudes About Access and Fairness of California Courts Toward
Gay Men and Lesbians: Mean Fairness Rating¹ by Sexual Orientation

Success of the Courts in:	Heterosexual	Lesbian/Gay Man/Bisexual
Providing access for lesbians and gay men	3.33	2.83
Being available to resolve disputes involving gay men and lesbians	3.19	2.54
Providing fair and unbiased treatment for lesbians and gay men	3.30	3.31

N = 1,362 for heterosexual and 65 for lesbian/gay man/bisexual respondents.

¹ Ratings were provided on four-point scales, where 1 = very unsuccessful and 4 = very successful.

Respondent Anger About the Survey

A subset of survey respondents found the survey questions to be wasteful, intrusive, offensive, and evidence of the Judicial Council's investment in "political correctness." The exact number of these respondents is unknown, because not all open-ended comments were analyzed; in addition, some provided comments on incomplete or blank survey forms that could not be included in the analysis. A review of 200 completed questionnaires, however, revealed 12 such comments; in addition, approximately 12 letters or notes to the AOC registered dissatisfaction, and many more phone calls were placed with the same message.

The resistance to the survey suggests that a substantial subset of the population perceive issues relevant to gay men and lesbians as at best unimportant. Examples of these comments follow.

This [survey] is a waste of time and money.

Instead of wasting money on this survey, the money should have been used to improve court facilities and provide employees with adequate training and supplies. We are all adults—gay people are discriminated [against] as much as everyone else is.

Truthfully, I think this is quite a waste of taxpayers' money. . . . I'm a normal female who thinks that you should do your job well, period! . . . And no special treatment should be given if you are a lesbian or a gay man. I feel God didn't make men for men nor female for female, but

man for female and female for male. We've come a long way from what this country started out with.

I am very offended by this document!!! This is the worst harassment I have ever felt in my workplace!!

Why are you using judicial resources and taxpayer dollars on this survey? It appears to me the Judicial Council is hypersensitive to these matters and ignores more significant issues.

Being a Christian, I find this survey offensive.

My opinion is my business and not for you to pass some law so another person is entitled to something more than another.

Believe me—I'd rather have a pay raise and so would my co-workers—so we can make a decent living rather than have a “sexual orientation fairness subcommittee.” What a joke—what is the point? Do something more constructive with my money please.

Summary

The results of the employee survey indicate that the work experiences of gay men and lesbians differ in important respects from the work experiences of heterosexuals employed in the California courts. Although a majority of both groups experienced their workplace as fair, lesbians and gay men experienced and observed a higher incidence of negative actions, comments, and discrimination based on sexual orientation than did heterosexuals. The most common negative actions were comments, jokes, and ridicule toward gay men and lesbians.

Employees who experience or observe negative actions, comments, or discrimination based on sexual orientation do not routinely intervene or take any action in response. Although some fear negative reprisals, most dismiss the incidents as insignificant or believe that intervention will not make any difference. Those who do intervene, however, have about an even chance of reducing or stopping the negative behaviors or discrimination.

Perceptions of the fairness of the California courts to lesbians and gay men vary as a function of sexual orientation. Lesbian respondents perceived the courts as least fair, followed by gay men, heterosexual, and bisexual respondents.

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APPENDIX A: COURT USERS SURVEY

This appendix includes the following documents:

1. ***Cover letter*** that accompanied our screening survey sent to National Gay and Lesbian Task Force (NGLTF) and Human Rights Campaign (HRC) members.
2. ***Screening survey*** that was initially mailed to HRC and NGLTF members to gather a sample of gay and lesbian users of the California courts.
3. ***Cover letter*** accompanying the court users survey.
4. ***Survey*** mailed to a sample of gay and lesbian court users.

APPENDIX B: COURT EMPLOYEES SURVEY

This appendix includes the following documents:

1. *Cover letter* accompanying the court employees survey.
2. *Survey* mailed to a sample of court employees.

APPENDIX D:

SURVEY INSTRUMENTS

(See Appendix C, “Consultants’ Report.”)